Feb 3. Affirmed - Opp

SUPREME COURT OF THE UNITED STATES.

No. ~~183.~~ 109.

THE PROPELLER OTTAWA, HER TACKLE, &c., MARTIN RYERSON, CLAIMANT AND APPELLANT,

vs.

ROBERT STEWART, THE PACIFIC MUTUAL INSURANCE COMPANY, AND THE ARCTIC INSURANCE COMPANY OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

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In the circuit court United States, northern district of Illinois.

Pleas in the circuit court of the United States for the eighth circuit and northern district of Illinois, before the Hon. David Davis, one of the justices of the Supreme Court of the United States, and sole judge of said circuit, and on Monday, the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the eighty-eight year.

WM. H. BRADLEY, *Clerk.*

ROBERT STEWART, THE PACIFIC MUTUAL INSURANCE COMPANY OF NEW YORK, AND THE ARCTIC INSURANCE COMPANY OF NEW YORK, *v.* THE PROPELLER OTTAWA. } Appeal.

Be it remembered that on the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and sixty-two, the respondent, by its proctors, filed in the circuit court of the United States for the northern district of Illinois the transcript of the record of the district court for the northern district of Illinois, in appeal from said court, which transcript, and together with the additional proofs taken and filed therein, and all the proceedings had in said circuit court, read in the words and figures following, to wit:

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1 Pleas in the district court of the United States of America for the northern district of Illinois, held at the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, judge of said district court, on Thursday, the twenty-seventh day of February, in the year of our Lord one thousand eight hundred and sixty-two, in the December term, A. D. 1861, of said court, and of our independence the eighty-sixth year.

WM. H. BRADLEY, *Clerk.*

ROBERT STEWART
vs.
PROPELLER OTTAWA.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the second day of October, in the year of our Lord one thousand eight hundred and sixty, came Robert Stewart, libellant in this suit, by L. Proudfoot, jr., esquire, his proctor, and filed in the office of the clerk of the district court of the United States of America for said northern district of Illinois, at Chicago, in said district, his libel against the propel-
2 ler Ottawa. Respondent in this suit also, at the same time, filed his stipulation for costs in said entitled cause, which said libel and stipulation are in the words and figures following, to wit:

To the honorable Thomas Drummond, judge of the district court of the United States for the northern district of Illinois—In admiralty:

The libel of Robert Stewart, of the city of Chicago, in said district, against the propeller Ottawa, her engines and machinery, boats, tackle, apparel and furniture, and all persons legally intervening for their interest in the same, in a cause of collision, civil and maritime, alleges as follows:

First. That the libellant, before and at the time of the collision hereinafter in the third article mentioned, was the owner and proprietor of a certain schooner called the Caledonia, with her boats, tackle and apparel and furniture, which said schooner was used by the said libellant for the transporting grain and other freight from Chicago aforesaid to various ports on the lakes, and was also the owner of the cargo hereinafter mentioned.

3 Second. That on Sunday, the 16th day of September, A. D. 1860, the said schooner was engaged prosecuting a voyage from Chicago aforesaid to Buffalo, in the State of New York, having on board as cargo about six thousand bushels of wheat belonging to said libellant; the said schooner then, and at time of the collision hereinafter mentioned, being tight, staunch, and in every respect well manned, tackled and appointed, and having the usual and necessary complement of officers and men, and that the master and crew were on the lookout for the protection and safety of said vessel and cargo.

Third. That at about eight o'clock in the evening of said day the said schooner, in prosecuting her said voyage, was in lake Huron, about eight miles

ir. a northwesterly direction from Thunder Bay light, steering in a direction southeast by south half-south, and running at the rate of about 7 or 8 knots an hour, the wind blowing strong and squally from the west, accompanied by rain, and the night being dark and cloudy; that at about the time aforesaid
4 said schooner encountered the propeller Ottawa, bound up the lake, and that said propeller was so negligently and carelessly steered and managed that a collision then and there occurred between said propeller and said schooner, by which the bows of said schooner were split open and she was sunk, and said schooner and her whole cargo lost.

Fourth. That before and at the time of the said collision a good and sufficient lookout was kept at the bow of said schooner and a bright light on the "pall bitt;" that about two minutes before said collision occurred the said lookout saw a red light over the starboard bow; that said lookout immediately called out "light ahead," and the master immediately went forward to see whether it was a sailing vessel or steamer, and just as he reached the bow of said schooner said propeller sounded her whistle once, and said master immediately ordered the schooner's helm hard a-port, which was instantly done; that said schooner answered her helm readily, but that said propeller was so
5 negligently steered and managed that said schooner struck said propeller on her port quarter, and said schooner was sunk as aforesaid.

Fifth. That before and at the time of the collision the only light on board the said propeller, visible to those on board the said schooner, was the red light aforesaid, which only became visible about two minutes before said collision occurred; that before and at the time of said collision said schooner was on her course, and the master and one other man were on deck and on the lookout, besides the wheelsman, and that no precaution was neglected for preserving the vessel safe; that until the propeller's red light was seen, as aforesaid, those on board of said schooner had no intimation whatever of their approach or neighborhood of said propeller; that said schooner's light might have been seen by those on board of said propeller when said vessels were at least a mile apart, and that had said propeller been properly managed and steered, and had she shown sufficient lights, said collision would not have occurred.

Sixth. That said schooner was worth four thousand dollars, and the said cargo was worth sixty-five hundred dollars, and that said schooner and
6 cargo were wholly destroyed and lost in consequence of said collision; that said collision was occasioned by the fault and mismanagement of those in charge of said propeller, and not by the fault or negligence of those in charge of the said schooner; and that the damage sustained by the libellant in consequence of the loss of said vessel and cargo is ten thousand five hundred dollars.

Seventh. That since the said collision occurred the libellant has repeatedly applied to the master and owners of said propeller and requested them to settle with this libellant for the damages sustained by him as aforesaid, but the said master and owners deny that there is any liability on the part of said propeller for the said damages, or any part thereof.

Eighth. That the said propeller Ottawa is now lying in the port of Chicago and within the jurisdiction of this court.

Ninth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellant prays that process, in due form of law, ac-
7 cording to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said propeller Ottawa, her engine, machinery, tackle, apparel, and other furniture, and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the damages as aforesaid, and that the said propeller may be

condemned and sold to pay the same, and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

ROBERT STEWART.
L. PROUDFOOT, JR.,
Proctor for Libellant.

Subscribed and sworn to before me this 1st day of October, A. D. 1860.

E. W. SMITH,
U. S. Commissioner.

Endorsed: Filed Oct. 2, 1860.

WM. H. BRADLEY, *Clerk.*

Libellant's stipulation.

District court, term A. D. 1860.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Whereas a libel was filed in this court on the day of October,
8 A. D. 1860, by Robert Stewart, against the propeller Ottawa, her engine, machinery, boats, tackle, apparel and furniture, for the reasons and causes in the said libel mentioned, and praying that the same may be condemned and sold to answer the prayer of the libellant; and the said libellant and Colin Campbell, surety, the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the libellant or his surety, execution may issue against their goods, chattels and lands for the sum of two hundred and fifty dollars: Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and are bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall pay all such costs as shall be awarded against him by this court, or, in case of appeal, by the appellate court.

ROBERT STEWART.
COLIN CAMPBELL.

Taken and acknowledged this 1st day of October, A. D. 1860, before me.

E. W. SMITH,
U. S. Commissioner.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

9 Colin Campbell, party to the above stipulation, being duly sworn, deposes and says that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars over and above all his debts.

COLIN CAMPBELL.

Sworn this first day of October, A. D. 1860, before me.

EDWARD W. SMITH,
U. S. Commissioner.

Endorsed: Filed Oct. 2d, A. D. 1860.

WM. H. BRADLEY, *Clerk.*

Whereupon a writ of monition issued out of said clerk's office against respondent, which said monition, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Monition.

THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

Whereas a libel hath been filed in the district court of the United States in and for the northern district of Illinois on the second day of October, in the year of our Lord one thousand eight hundred and sixty, by Robert Stewart, against the propeller Ottawa, her engines, machinery, boats and tackle, apparel and furniture, for reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having or pretending to have any right, title, or interest therein may be cited to appear and answer all and singular the matters in said libel articulately propounded, and that this court would be pleased to pronounce for the sum of ten thousand and five hundred dollars, the damages in said libel, besides costs of suit:

You are therefore commanded to attach the said propeller Ottawa, her engines, machinery, and boats, tackle, apparel, and furniture, and to detain the same in your custody until the further order of this court respecting the same, and to give due notice, by publication in some daily newspaper printed in the city of Chicago, for fourteen days previous to the day of trial, and by notice posted up in the most public manner for the space of fourteen days at or near the place of trial of such seizure and libel, to all persons claiming the said propeller Ottawa, her engines, machinery, boats and tackle, apparel and furniture, or knowing or having anything to say why this court should not pronounce against the same, according to the prayer of the said libel; and that they be and appear before the said court, to be held in and for the northern district of Illinois, at the United States court-room in the city of Chicago, in said district, on the first Monday in November next, if that be a day of jurisdiction—if not, then on the first day of jurisdiction thereafter—at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return, together with this writ.

[SEAL.] Witness the honorable Thomas Drummond, judge of the said court, this second day of October, in the year of our Lord one thousand eight hundred and sixty, and of our independence the 85th year.

WM. H. BRADLEY, *Clerk.*

I have this 2d day of October, 1860, served the within writ on the within named propeller Ottawa by taking the same under my custody; and good and sufficient bonds having been given, I have released the same from custody.

THOMAS HOYNE,
U. S. Marshal, Northern District of Illinois,
By WM. B. SNOWHOOK, *Deputy.*

Endorsed: Filed this 12th day of Nov., A. D. 1860.
WM. H. BRADLEY, *Clerk.*

The bond returned by said marshal with said monition is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, Martin Ryerson, of Chicago, as principal, and Robert H. Foss and T. M. Avery, of Chicago, county of Cook

and State of Illinois, as sureties, are held and firmly bound unto Robert Stewart in the penal sum of twenty-one thousand dollars, to be paid unto the said Robert Stewart; which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally,
13 firmly by these presents.

Sealed with our seals, dated at Chicago, the 2d day of October, in the year of our Lord one thousand eight hundred and sixty.

Whereas, in a certain cause, civil and maritime, moved and prosecuted in the district court of the United States of America for the northern district of Illinois, on behalf of the above-named Robert Stewart, against the propeller Ottawa, her engines, machinery, boats and tackle, apparel and furniture, a warrant of arrest has been issued out of the said court against the said propeller, her engines, machinery, boats, tackle, apparel, and furniture, which said warrant is now in the hands of Thomas Hoyne, marshal of the said district, or in virtue of which said warrant the said propeller, her engines, machinery, boats, tackle, apparel, and furniture has been arrested by Thomas Hoyne, marshal, and are now in his custody:

Now, therefore, the condition of this obligation is such, that if the above-bounden Martin Ryerson, the claimant of said propeller, her engines, machinery, boats, tackle, apparel, and furniture, shall well and truly abide and answer the decree of said court in the aforesaid cause, then this obligation
14 shall be void; otherwise it shall remain in full force and virtue.

MARTIN RYERSON. [SEAL.]
ROBERT H. FOSS. [SEAL.]
T. M. AVERY. [SEAL.]

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Martin Ryerson and Robert H. Foss, each for himself, being duly sworn, deposes and says that he is a resident of the northern district of Illinois, and that he owns property in said district, subject to execution, worth twenty-one thousand dollars over and above all just debts and liabilities.

Sworn to before me this 2d day of October, A. D. 1860.

I hereby accept of the within security.

L. PROUDFOOT, JR.,
Proctor for Libellants.

Approved.

THOMAS DRUMMOND.

On this day, to wit, the twentieth day of October, A. D. 1860, the Pacific Mutual Insurance Company, by E. W. Smith, esq., their proctor, filed in said clerk's office their petition and their stipulation in said cause, which
15 said petition and stipulation are in the words and figures following, to wit:

Petition of Pacif. Mutual Co.

To the honorable Thomas Drummond, judge of the district court of the United States for the northern district of Illinois.—In admiralty:

The petition of the Pacific Mutual Insurance Company of New York, underwriters of the cargo of the schooner Caledonia, respectfully represents as follows:

First. That your petitioners are a corporation, resident in the city of New York, doing business as marine underwriters and insurers.

Second. That on the thirteenth day of September, A. D. 1860, your petitioners insured a certain cargo of wheat on board the said schooner Caledonia, bound from Chicago to Buffalo, consisting of six thousand one hundred and two bushels and twenty pounds, for the sum of sixty-five hundred dollars, for the

benefit of one Robert Stewart, of Chicago, the owner of said cargo, against the perils of navigation on the said voyage, and that the said sum of sixty-five hundred dollars was the full value of said cargo.

16 Third. That said schooner Caledonia, with said cargo on board, while prosecuting her said voyage, collided with the Propeller Ottawa on Lake Huron, and in consequence of said collision the said schooner was sunk and her said cargo was wholly lost.

Fourth. That the loss of the said cargo having been occasioned by one of the perils insured against, your petitioners became liable to pay to the said Robert Stewart the amount for which said cargo was so insured by them, as for a total loss, and that your petitioners accordingly did, on the ninth day of October, A. D. 1860, pay to the said Robert Stewart the full sum of sixty-five hundred dollars.

Fifth. That on the second day of October, A. D. 1860, the said Robert Stewart filed his libel in this honorable court against the said propeller Ottawa, alleging in said libel that said collision was caused and said vessel and cargo sunk wholly by and through the negligence and improper conduct of the persons in charge of the propeller, and that the damages sustained by the

17 libellants by the loss of said cargo is the said sum of sixty-five hundred dollars, and praying that the said court will decree against the said propeller for the amount of damages sustained by said libellants by the loss of said vessel and cargo in consequence of said collision, and that said propeller may be sold to pay the same; all of which matters and things, reference being had to said libel now on file in this honorable court, will more fully appear.

Sixth. That by the payment of said sum of sixty-five hundred dollars, as aforesaid, to the said Stewart, your petitioners have acquired a right to all the interest of said Stewart in any decree which may be rendered in said suit against said propeller for damages for the loss of said cargo.

Wherefore your petitioners pray that they may be made parties libellant in said suit, and may be declared subrogated to all the right and interest of said Robert Stewart in and to all damages which may be decreed to be paid by said propeller Ottawa or by the claimants in said suit for the loss of said cargo

18 as aforesaid, and that these petitioners may have the same benefit of all proceedings heretofore had in said cause to the extent of their said interest therein as if they had been made parties to the original libel.

PACIFIC MUTUAL INS. CO. OF N. Y.,
By PHILLIPS AND VAN WAGENEN,
Their Agents.

E. W. SMITH, *Proctor for Petitioners.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Richard D. Van Wagenen, being duly sworn, deposes and says that he is the agent at Chicago of the petitioners in the above petition mentioned; that he has read said petition, and that the facts set forth therein are true.

RICH'D. D. VAN WAGENEN.

Sworn to and subscribed before me this 19th day of October, A. D. 1860.
WM. H. BRADLEY, *Cl'k.*

It is hereby stipulated by and between the parties to this suit that the statements herein contained are true so far as they relate to the payment by the insurance company under the policy therein stated, which is also hereby admitted.

ROBERT STEWART,

19 Per L. PROUDFOOT JR, *Proctor.*

For propeller Ottawa, WALKER, VAN ARMAN & DEXTER.

Endorsed: Filed Oct. 20th, 1860. WM. H. BRADLEY, *Cl'k.*

Stipulation of Pacific Mutual Ins. Co.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

District court, October term, A. D. 1860.

Whereas a libel was filed in this court on the second day of October, A. D. 1860, by Robert Stewart, against the propeller Ottawa, her boats, tackle, apparel and furniture, for the reasons and causes in the said libel mentioned; and whereas a petition has been filed in the said cause by the Pacific Mutual Insurance Company of New York, praying that said company may be made parties libellant in said suit, and Richard D. Van Wagenen, as agent for said company, and ——— surety, the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the petitioners or their surety, execution may issue against their goods, chattels and lands for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of
20 whom it may concern, that the stipulators undersigned shall be and are bound in the sum of two hundred and fifty dollars, conditioned that the petitioners above named shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

RICHARD D. VAN WAGENEN,
Agent of Pacific Mu. Ins. Co. of New York.
R. H. JORDON.

Endorsed: Filed October 20th, A. D. 1860.
WM. H. BRADLEY, *Clerk.*

On the same day, to wit, the twentieth day of October, in the October term, A. D. 1860, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

Record entry.

ROBERT STEWART
v.
THE PROPELLER OTTAWA. } Libel.

Now, at this time, comes the Pacific Mutual Insurance company, by E. W. Smith, esq., proctor, and upon petition filed moved the court that said company be subrogated to all the rights of the libellant in this behalf as regards the claim for loss of cargo.

21 On this day, to wit, the twenty-first day of November, A. D. 1860, Martin Ryerson, by Messrs. Walker, Van Armen and Dexter, his proctors, filed in said clerk's office his claim and answer in said entitled cause, which said claim and answer are in the words and figures following, to wit:

Claim.

To the honorable Thomas Drummond, judge of the district court of the United States for the northern district of Illinois.

Martin Ryerson, of Chicago, in said district, owner of the propeller Ottawa, her tackle, boats, apparel and furniture, intervening for his interest in the said propeller Ottawa, her tackle, apparel, boats, furniture, &c., appears before this honorable court, and claiming the said propeller, her tackle, apparel, furniture, boats, &c., and states that he is the true owner thereof, and that no other person is the owner thereof.

And thereupon the said claimant prays that this honorable court will be

pleased to decree a restitution of the same to him, and otherwise right and justice to administer in the premises.

WALKER, VAN ARMEN & DEXTER,
Proctors for Claimants.

Endorsed: Filed Nov. 21st, 1860.

WM. H. BRADLEY, *Clerk.*

22 *Answer.*

To the honorable Thomas Drummond, judge of the district court of the United States for the northern district of Illinois:

The answer of Martin Ryerson, of Chicago, in said northern district, intervening for his interest in the propeller Ottawa, to the libel of Robert Stewart, of Chicago, answers and alleges as follows:

First. That this respondent is ignorant of the matter stated in the first article of said libel, and neither admits nor denies the same.

Second. That this respondent is ignorant of the matter set forth in the first part of the second article of said libel, and neither admits nor denies the same.

That this respondent denies the truth of the second part of said second article, wherein it is alleged that "the said schooner then and at the time of the collision hereinafter mentioned, being tight, staunch, and in every respect well manned, tackled, and appointed, and having the usual and necessary complement of officers and men, and that the master and the crew were on the lookout for the protection and safety of said vessel and cargo, but says the truth
23 in regard thereto is as hereinafter alleged.

Third. That this respondent neither admits nor denies the truth of the first part of the third article of said libel.

This respondent neither admits nor denies the truth of the first statement in the second part of the third article of said libel, to wit, that the said schooner encountered the propeller Ottawa; but this respondent says that if the said schooner did so encounter the said propeller Ottawa, that the statement contained in the last part of the said third article, to wit, that said propeller was so negligently and carelessly steered and managed that a collision then and there occurred between said propeller and said schooner, by which the bows of said schooner were split open and she was sunk, and said schooner and her whole cargo last, is not true, but that the truth in regard thereto is as hereinafter stated.

Fourth. That this respondent denies the statement made in the fourth article of said libel, to wit, that before and at the time of the said collision a good and sufficient lookout was kept at the bow of said schooner. This respondent denies the further statement contained in said fourth article, to wit, that
24 the said propeller was negligently steered and managed. All other statements in said fourth article this respondent neither admits nor denies.

Fifth. This respondent admits the statement contained in the fifth article of said libel, to wit, that said schooner's light might have been seen by those on board said propeller when said vessels were at least a mile apart; but this respondent denies the truth of all other statements made in the said fifth article of said libel, and says the truth is as hereinafter stated.

Sixth. This respondent denies the truth of the statements made in the sixth article of said libel.

Seventh. This respondent admits the truth of the statement contained in the seventh article of said libel.

Eighth. This respondent admits the truth of the matters stated in the eighth and ninth articles of said libel.

Ninth. That this respondent further alleges as follows: that the propeller Ottawa, bound from Buffalo to Chicago, at about seven o'clock in the evening

on Sunday, the sixteenth of September, 1860, on Lake Huron, and not far from Thunder Bay Island light, saw a light nearly ahead, but a little over the
25 larboard bow. That when the said light was first seen by those on board the propeller, it was from three to four miles distant; that at that time the propeller also saw a light on her starboard bow; that the propeller was then steering northwest; that she kept on her course until the light on her starboard bow was abreast of her, which was some time before the collision, and then put her helm a-port so that she headed north. That she kept on this course until the collision occurred; that after she changed her course to north she saw the light of the said vessel coming down, and blew her whistle for some minutes before the collision occurred, but that the said vessel was so negligently managed and steered that she run into the said propeller. That as the two vessels were respectively situated at the time the propeller first saw the light of the said vessel, it was the duty of the propeller to change her course, as she did change it, and let the said vessel pass on her larboard hand, and that it was the duty of the said vessel to keep on the larboard hand of said propeller, which she did not do; that if the said vessel had kept on her proper course no collision would have occurred; that no proper lookout was kept on said
26 vessel, and that if there had been said accident would have been avoided. That the said schooner was not seaworthy, and that she was manned by an incompetent captain and crew, and that through the negligence, incompetency, and bad management of said captain and crew said collision was brought about, and that the same was not the fault of the said propeller, but occurred notwithstanding every precaution taken on the part of those in management of said propeller.

Tenth. That all and singular the premises are true. Wherefore the respondent prays this honorable court would be pleased to pronounce against the libel aforesaid and to condemn the libellant in costs, and otherwise law and justice to administer in the premises.

WALKER, VAN ARMEN & DEXTER,
Proctors for Respondent.

MARTIN RYERSON.
A. W. ARLINGTON, *Counsel.*

Subscribed and sworn before me this 21st day of November, 1860.
FRED. W. COLE, *U. S. Com.*

Endorsed: Filed Nov. 21, 1860. W. H. BRADLEY, *Clerk.*

Stipulation to amend libel.

27 On this day, to wit, the fifteenth day of December, A. D. 1860, said respondent, by his proctors, filed in said clerk's office a stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

United States district court for the northern district of Illinois.

ROBERT STEWART }
vs.
THE PROPELLER OTTAWA. }

It is stipulated that the libel in this cause may be amended by adding the usual clause, to the effect that the schooner and propeller were vessels of more than twenty tons burthen, and were enrolled and licensed for the coasting trade, and at the time of the collision were engaged in commerce between the different States of the United States upon the lakes and rivers connecting said lakes.

WALKER, VAN ARMAN & DEXTER,
Proctors for Defendant.

Endorsed: Filed Dec. 15, 1860. WM. H. BRADLEY, *Clerk.*

Amended libel.

On the same day, to wit, the fifteenth day of December, A. D. 1860, came said libellant, by his proctor, and filed in said clerk's office his amended
28 libel in said entitled cause, which said amended libel is in the words and figures following, to wit:

To the honorable Thomas Drummond, judge of the district court of the United States for the northern district of Illinois.—In admiralty:

The libel of Robert Stewart, of the city of Chicago, in said district, owner of the schooner Caledonia, against the propeller Ottawa, her engines and machinery, boats, tackle, apparel, and furniture, and all persons legally intervening for their interest in the same, in a cause of collision, civil and maritime, alleges as follows:

1st. First. That the said propeller Ottawa is a vessel of more than twenty tons burthen, and before and at the time of the collision hereinafter mentioned was enrolled and licensed for the coasting trade, and engaged in the business of commerce and navigation between ports and places in different States and Territories of the United States upon the lakes and navigable waters connecting said lakes; that before and at the time of said collision the said schooner Caledonia was a vessel of more than twenty tons burthen, and was enrolled and li-
29 censed for the coasting trade, and was engaged in the like business of commerce and navigation between ports and places in the different States and Territories of the United States upon the lakes and navigable waters connecting said lakes.

2d. Second. That the libellant, before and at the time of the collision hereinafter in the fourth article mentioned, was the owner and proprietor of the said schooner Caledonia, with her boats, tackle, apparel, and furniture, which said schooner was used by the said libellant for transporting grain and other freight from Chicago aforesaid to various ports on the lakes, and was also the owner of the cargo hereinafter mentioned.

3d. Third. That on Sunday, the 16th day of September, A. D. 1860, the said schooner was engaged prosecuting a voyage from Chicago aforesaid to Buffalo, in the State of New York, having on board a cargo of about six thousand bushels of wheat, belonging to said libellant, the said schooner then and at the time of the collision hereinafter mentioned being tight, staunch, and in every respect
30 well manned, tackled, and appointed, and having the usual and necessary complement of officers and men, and that the master and crew were on the lookout for the protection and safety of said vessel and cargo.

4th. Fourth. That about eight o'clock in the evening of said day the said schooner, in prosecuting the said voyage, was in Lake Huron, about eight miles in a northwesterly direction from Thunder Bay light, steering in a direction southeast by south half-south, and running at the rate of about seven or eight knots an hour, the wind blowing strong and squally from the west, accompanied by rain, and the night being dark and cloudy; that about the time aforesaid said schooner encountered the propeller Ottawa, bound up the lake, and that said propeller was so negligently and carelessly steered and managed that a collision then and there occurred between said propeller and said schooner, by which the bows of said schooner was split open and she was sunk, and said schooner and her whole cargo lost.

31 5th. Fifth. That before and at the time of said collision a good and sufficient lookout was kept at the bows of said schooner, and a bright light on the fall bit; that about two minutes before said collision occurred the said lookout saw a red light over the starboard bow; that said lookout immediately called o t, "light ahead," and the master immediately went forward to see whether it was a sailing vessel or a steamer, and just as he reached the bow of

said schooner said propeller sounded her whistle once, and said master immediately ordered the schooner's helm "hard a-port," which was instantly done; that said schooner answered her helm readily, but that said propeller was so negligently steered and managed that said schooner struck said propeller on her port quarter, and said schooner was sunk, as aforesaid.

6th. Sixth. That before and at the time of the collision the only light on board the said propeller, visible to those on board the said schooner, was the red light aforesaid, which only became visible about two minutes before said collision occurred; that before and at the time of said collision said
32 schooner was on her course, and the master and one other man were on deck and on the lookout, besides the wheelsman, and that no precaution was neglected for preserving the vessel safe; that until the propeller's red light was seen, as aforesaid, those on board of said schooner had no intimation whatever of the approach or neighborhood of said propeller; that said schooner's light might have been seen by those on board of said propeller when said vessels were at least a mile apart; and that had said propeller been properly managed and steered, and had she shown sufficient lights, such collision would not have occurred.

7th. Seventh. That said schooner was worth four thousand dollars, and the said cargo was worth sixty-five hundred dollars, and that said schooner and cargo were wholly destroyed and lost in consequence of said collision; that said collision was occasioned by the fault and mismanagement of those in charge of said propeller, and not by fault or negligence of those in charge of said schooner, and that the damage sustained by the libellant in consequence of said vessel and cargo is ten thousand five hundred dollars.

33 8th. Eighth. That since the said collision occurred the libellant has repeatedly applied to the master and owner of the said propeller, and requested them to settle with this libellant for the damages sustained by him as aforesaid, but the said master and owners deny that there is any liability on the part of said propeller for the said damages, or any part thereof.

9th. Ninth. That the said propeller Ottawa is now lying in the port of Chicago, and within the jurisdiction of this court.

10th. Tenth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court. Wherefore the libellant prays that process, in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said propeller Ottawa, her engines, machinery, tackle, apparel, and other furniture, and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of
34 the damages as aforesaid, together with the costs of this suit, and that the said propeller may be condemned and sold to pay the same, and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

ROBERT STEWART.
L. PROUDFOOT, JR.,
Proctor for Libellant.

Subscribed and sworn to before me this 14th day of November, 1860.
E. W. SMITH, *U. S. Commissioner.*

Endorsed: Filed Dec. 15, 1860.
W. H. BRADLEY, *Cl'k.*

Petition of Arctic Ins. Company.

On the same day, to wit, the fifteenth day of December, A. D. 1860, the Arctic Insurance Company, by E. W. Smith, esq., their proctor, filed in said clerk's

office their petition and stipulation in said entitled cause, which said petition and stipulation are in the words and figures following, to wit:

35 To the honorable Thomas Drummond, judge of the district court of the United States for the northern district of Illinois.—In admiralty:

The petition of the Arctic Insurance Company of New York, underwriters of the schooner Caledonia, her anchors, tackle, rigging, and furniture belonging thereto, respectfully represents as follows:

First. That your petitioners are a corporation, resident in the city of New York, doing business as marine underwriters and insurers.

Second. That on the thirteenth day of September, A. D. 1860, your petitioners insured the schooner Caledonia, with her anchors, tackle, apparel, and furniture thereto belonging, for the term of one year from said date, said schooner being engaged in the business of commerce and navigation between ports and places upon the lakes for the benefit of one Robert Stewart, of Chicago, the owner of said vessel, against the perils of navigation on said lakes, for the sum of two thousand and sixty-seven dollars.

Third. That said schooner Caledonia, while prosecuting a voyage on said lakes, bound from the port of Chicago to the port of Buffalo, collided
36 with the propeller Ottawa on Lake Huron, and in consequence of collision the said schooner was sunk and wholly lost.

Fourth. That the loss of said schooner having been occasioned by one of the perils insured against, your petitioners became liable to pay to the said Robert Stewart the amount for which said schooner was so insured by them as for a total loss; and that your petitioners accordingly did, on the fourteenth day of November, A. D. 1860, pay to the said Robert Stewart the full sum of two thousand and sixty-seven dollars.

Fifth. That on the second day of October, A. D. 1860, the said Robert Stewart filed his libel in this honorable court against the said propeller Ottawa, alleging in said libel that said collision was caused, and said vessel sunk, wholly by and through the negligence and improper conduct of the persons in charge of the propeller, and that the damage sustained by the libellant by the loss of said vessel is the sum of four thousand dollars, and praying that said court will decree against the said propeller for the amount of damage sustained by said libellant by the loss of said vessel in consequence of said collision, and that said propeller may be sold to pay the same; all of which matters
37 and things, reference being had to said libel now on file in this honorable court, will more fully appear.

Sixth. That by the payment of said sum of two thousand and sixty-seven dollars, as aforesaid, to the said Stewart, your petitioners have acquired a right to the interest of said Stewart to that amount in any decree which may be rendered in said suit against said propeller for damages for the loss of said vessel.

Whereupon your petitioners pray that they may be made parties libellant in said suit, and may be declared subrogated to the rights and interest of said Robert Stewart to the amount aforesaid, in and to all damages which may be decreed to be paid by said propeller Ottawa, or by the claimants in said suit for the loss of said vessel as aforesaid, and that these petitioners may have the same benefit of all proceedings heretofore had in said cause to the extent of their social interest therein, as if they had been made parties in the original libel.

ARCTIC INSURANCE CO.,
By RICHARD D. VAN WAGENEN, *their Ag't.*
E. W. SMITH,
Proctor for Petitioner.

38 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Richard D. Van Wagenen, being duly sworn, deposes and says that he is the agent, at Chicago, of the petitioners in the above petition mentioned; that he has read said petition, and that the facts set forth therein are true.

RICH'D D. VAN WAGENEN.

Sworn and subscribed before me this 14th day of November, 1860.

FRED. W. COLE,
U. S. Com.

It is hereby stipulated by and between the parties to this suit that the statements herein contained are true, so far as they relate to the payment by the Arctic Insurance Co. under the policy therein stated, which is also hereby admitted.

ROBERT STEWART,
Per PROUDFOOT, JR.,
Proctor.
WALKER, VAN ARMEN & DEXTER,
For Propeller Ottawa.

Endorsed: Filed Dec. 15th, 1860.

WM. H. BRADLEY, *Clerk.*

Stipulation of Arctic Ins. Company.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

District court, October term, 1860.

39 Whereas a libel was filed in this court on the second day of October, A. D. 1860, by Robert Stewart, against the propeller Ottawa, her boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned; and whereas a petition has been filed in the said cause by the "Arctic Insurance Company," of New York, praying that said company may be made parties libellant in said suit, and Richard D. Van Wagenen, as agent of said company, and R. H. Jordan, surety; the parties hereby consenting and agreeing that, in case of default or contumacy on the part of the petitioners or their sureties, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and are bound in the sum of two hundred and fifty dollars, conditioned that the petitioners above named shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

40 ARCTIC INS. CO.,
By RICH'D D. VAN WAGENEN, *their Agent.*
R. H. JORDAN.

Endorsed: Filed Dec. 15th, A. D. 1860.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the eleventh day of February, A. D. 1861, the following stipulation was filed in the said clerk's office in said entitled cause, which is in the words and figures following, to wit:

Stipulation of value of schooner.

ROBERT STEWART
vs.
PROPELLER OTTAWA.

It is hereby stipulated and agreed by and between the parties to the above-entitled suit that the actual value of the schooner Caledonia, at the time of her loss, as alleged in the libel, was thirty-five hundred dollars.

WALKER, VAN ARMAN & DEXTER,
Respondent's Att'ys.

L. PROUDFOOT, JR.,
Proctor for Libellant.

Feb'y 4th, 1861.

Endorsed: Filed Feb'y 11th, 1861.

WM. H. BRADLEY, *Cl'k.*

41 *Stipulation of the value of cargo.*

On this day, to wit, the twelfth day of March, A. D. 1861, a stipulation was filed in said clerk's office, in said entitled cause, which said stipulation is in the words and figures following, to wit:

District court of the United States for the northern district of Illinois.—In admiralty.

ROBERT STEWART
vs. } *ss:*
THE PROPELLER OTTAWA.

It is stipulated by and between the parties to the above-entitled suit that the cargo of wheat on board the Caledonia, at the time of her loss, was the property of the libellant; and it is further stipulated that, on the 13th day of September, 1860, No. 1 spring wheat was worth, in Chicago, ninety-five and a half cents per bushel on board, and that the same was worth, in Buffalo, on the same day, one dollar and twelve cents per bushel; that, on the sixteenth of said month, such wheat was worth, in Chicago, eighty-eight cents per bushel on board, and in Buffalo one dollar and four cents per bushel.

It is further stipulated that on the said thirteenth of September freight on wheat from Chicago to Buffalo was sixteen cents per bushel, and on the
42 sixteenth of said month said freight was fourteen and a half cents per bushel.

WALKER, VAN ARMEN & DEXTER,
Proctors for Respondents.

L. PROUDFOOT, JR.,
Proctor for Libellants.

Endorsed: Filed March 12, '61.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the nineteenth day of March, in the March term, A. D. 1861, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

Record entry.

ROBERT STEWART
vs.
PROPELLER OTTAWA. } Libel.

Now comes the respondent, by his proctor, and on motion leave is given to file an amended answer herein upon the payment of the expenses attending the taking of libellant's proofs to this time.

43 And afterwards, to wit, on the 22d day of March, A. D. 1861, the respondent, by his proctor, filed in said court an affidavit in the words and figures following, to wit:

U. S. district district.

ROBERT STEWART
vs.
PROPELLER OTTAWA. } In admiralty.

Martin Ryerson, being duly sworn, says he is the respondent in the above-entitled cause, and that he caused to be filed therein his answer on the 22d day of November last; (1860;) that at the time the said answer was filed he had only conversed casually with the captain of the propeller Ottawa in regard to the circumstances of the collision, intending at the close of navigation, and after the propeller Ottawa was laid up, to get from the captain a more detailed statement of the same; that in the mean time this respondent's att'y, who was then engaged at Napierville, Ill., in the trial of a cause, informed this deponent that the time for filing the answer was about to expire, and that the said attorney sent an answer to this respondent, who filed the same in this cause, believing it, at the time, to contain a correct statement of the facts; that

44 after the close of navigation this respondent had an opportunity to talk fully and particularly with the captain of the propeller Ottawa; that then he discovered that the impressions he had been under in regard to the lights of the vessel which collided with the propeller Ottawa were not correct in fact, and which impressions are set forth in the 5th and 9th articles of said answer.

This defendant further says, that from hearing that the propeller saw the light of a vessel half an hour before the collision, and then saw a vessel just at the time of the collision, he supposed, without inquiring particularly into the matter, that when they saw a vessel, it being in the night and dark, they must have seen her light; but that after more particular conversation with the captain of the propeller Ottawa, he is satisfied that those on board the propeller Ottawa saw no light on the vessel she collided with.

MARTIN RYERSON.

Subscribed and sworn to before me this 20th day of March, A. D. 1861.

PHILIP A. HOYNE,
U. S. Com'r, Ill.

Endorsed: Filed March 22d, 1861.

WM. H. BRADLEY, *Clk.*

45 On this day, to wit, the twenty-second day of March, A. D. 1861, came said respondent, by his proctors, and filed in said clerk's office his amended answer in said entitled cause, which said amended answer is in the words and figures following, to wit:

Amended answer.

To the honorable Thomas Drummond, judge of the district court of the United States for the northern district of Illinois:

The amended answer of Martin Ryerson, of Chicago, in said northern district, intervening for his interest in the propeller Ottawa to the libel of Robert Stewart, of Chicago, and alleges as follows:

First. That this respondent is ignorant of the matter stated in the first article of said libel, and neither admits nor denies the same.

Second. That this respondent is ignorant of the matters set forth in the first part of the second article of said libel, and neither admits nor denies the same.

That this respondent denies the truth of the second part of said second article, wherein it is alleged that the said schooner then and at the time of
46 the collision hereinafter mentioned, being tight, staunch, and in every respect well manned, tackled, and appointed, and having the usual and necessary complement of officers and men, and that the master and the crew were on the lookout for the protection and safety of said vessel and cargo, but says the truth in regard thereto is as hereinafter alleged.

Third. That this respondent neither admits nor denies the truth of the first part of the third article of said libel. This respondent neither admits nor denies the truth of the first statement in the second part of the third article of said libel, to wit, that the said schooner encountered the propeller Ottawa; but this respondent says that if the said schooner did so encounter the said propeller Ottawa, that the statement contained in the last part of the said third article, to wit, that the said propeller was so negligently and carelessly steered and managed that a collision then and there occurred between said propeller and said schooner, by which the bows of said schooner were split open and she was sunk, and said schooner and her whole cargo lost, is not true, but
47 that the truth in regard thereto is as hereinafter stated.

Fourth. That this respondent denies the statement made in the fourth article of said libel, to wit, that before and at the time of the said collision a good and sufficient lookout was kept at the bow of said schooner. This respondent denies the further statement contained in said fourth article, to wit, that the said propeller was negligently steered and managed; all other statements in said fourth article this respondent neither admits nor denies.

Fifth. That this respondent denies the statements made in the fifth article of said libel.

Sixth. This respondent denies the truth of the statements made in the sixth article of said libel.

Seventh. This respondent admits the truth of the statement contained in the seventh article of said libel.

Eighth. This respondent admits the truth of the matters in the eighth and ninth articles of said libel.

Ninth. That this respondent further alleges as follows: that the pro-
48 peller Ottawa, bound from Buffalo to Chicago, at about 7 o'clock in the evening, on Sunday, the sixteenth of September, 1860, on Lake Huron, and not far from Thunder Bay Island light, saw a light nearly ahead, but a little on the larboard bow; that when the said light was first seen by those on board the propeller, it was from three to four miles distant; that at that time the propeller also saw a light on the starboard bow; that the propeller was then steering northwest; that she kept on her course until the light on her starboard bow was abreast of her, which was some time before the collision, and then put her helm a-port, so that she headed north; that she kept on this course until the collision occurred; that after she changed her course north she sailed

about 15 minutes, and the first thing she saw was a vessel coming down on her port bow; that the said vessel had no light visible to those on board the propeller; that when those in charge of the propeller first saw the vessel she was so near them that any change in the course or speed of the propeller might and probably would have increased the danger; that as soon as the
49 vessel was seen by those on the propeller the whistle was blown, and continued to be blown, until the collision occurred, but that the said vessel was so negligently managed and steered that she run into the said propeller; that as the two vessels were respectively situated at the time the propeller first saw the light of the said vessel, it was the duty of the propeller to change her course, as she did change it, and let the said vessel pass on her larboard hand, and that it was the duty of the said vessel to keep on the larboard hand of said propeller, which she did not do; that if the said vessel had kept on her proper course no collision would have occurred; that no proper look-out was kept on said vessel, and if there had been said accident would have been avoided; that the said schooner was not seaworthy, and that she was manned by an incompetent captain and crew; and that through the negligence, incompetency and bad management of said captain and crew said collision was brought about, and that the same was not the fault of the said propeller,
50 but occurred notwithstanding every precaution taken on the part of those in management of said propeller.

Tenth. That all and singular the premises are true.

Wherefore the respondent prays this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise law and justice to administer in the premises.

WALKER, VAN ARMAN & DEXTER,
Proctors for the Respondent.
A. W. ARRINGTON, *Counsel.*

Endorsed: Filed March 22, 1861.

W. H. BRADLEY, *Clk.*

51 On this day, to wit, the 25th day of March, A. D. 1861, came said libellant, by his proctor, and filed in said clerk's office the evidence taken in behalf of said libellant in said entitled cause, which said evidence is in the words and figures following, to wit:

Depositions of libellant.

United States of America, northern district of Illinois.

ROBERT STEWART
against
THE PROPELLER OTTAWA. } In admiralty.

In pursuance of an agreement of the parties to the above suit, wherein it was agreed that I, the subscriber, should take the evidence in the said cause, I, J. Tilden Moulton, the commissioner, was attended by Messrs. Smith and Proudfoot, as proctors for the libellant, and Mr. Dexter as proctor for the respondent, on the tenth day of October, in the year of our Lord one thousand
52 eight hundred and sixty, and from time to time, as hereinafter appears, and took the following evidence on behalf of the libellant.

J. T. MOULTON,
U. S. Commissioner.

Deposition of L. J. Bangs.

Lawrence J. Bangs was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the said cause, and did thereupon, upon examination, depose, testify, and say:

My name is Lawrence J. Bangs; age, forty-five years; reside at Black Wolf, Winnebago county, Wisconsin; my occupation, sailing; was master of the schooner Caledonia; I joined the Caledonia in May last; ceased being master when she went to the bottom on the 16th of September this year. Robert Stewart was owner of the schooner; her measure was about 137 tons; she ran lumber and wood in the spring—sometimes to Michigan, and sometimes on the west shore: on her last trip she left Chicago on the 13th day of September, bound to Buffalo, loaded with wheat.

53 1 int. How much wheat had she on board?

Ans. She had 6,102 bushels $\frac{20}{60}$ lbs.

2 int. Have you the bill of lading? If so, produce it.

Ans. I have it, and will produce it to the commissioner; it is down at the office now.

3 int. What was the condition of the Caledonia as to seaworthiness on the last voyage?

Ans. She was in first rate order, as good as she could be, as far as I knew of: fit for the voyage she was to perform, well furnished in everything; she was thoroughly repaired under the inspection of Davidson, the agent of the underwriters, just before loading for this trip.

4 int. What was the number and quality of the crew?

Ans. Seven, all told; captain, mate, four hands, and cook. I had three able seamen and one ordinary seaman.

5 int. Was this voyage interrupted; and if so, how?

Ans. I don't know of any particular interruption until the sixteenth of September, when we came in contact with the propeller.

54 6 int. What were the consequences of the collision?

Ans. The schooner Caledonia sunk in consequence of the collision.

7 int. Was any portion of the vessel or cargo saved?

Ans. No, sir.

8 int. State the position of the Caledonia as near as possible at the time the collision occurred, and where she was.

Ans. At the time of the collision I was steering my course down along the land on Lake Huron, running from Thunder Bay Island light; at the time I was steering southeast by south half south; I should think I was about six or eight miles from the land between Middle island and Thunder Bay light, about ten or twelve miles from the light. The vessel would be about north from the light.

9 int. State the circumstances of the collision and how it occurred.

Ans. About eight or a quarter before eight o'clock in the evening it was dark and squally, with showers of rain off the land; the vessel was steering pretty heavy, being crowded with canvas; my attention was much engaged with the man at the helm, when the man at the lookout observed a light ahead. I went

55 forward to see if I could distinguish the vessel; by the time I got forward—I was looking for the light, it was a red light—I heard one blow of a steamer's whistle, and immediately ordered the helm a-port; she minded the helm and luffed up, and before she passed the propeller, as she was swinging, she collided with the propeller; I then saw it was a propeller; we struck him on the larboard quarter of the propeller.

10 int. What damage was done to the schooner by the collision?

Ans. She stove in her bows, and all her head gear was torn off; she split open the bow, opened the knight-heads about six inches from the stem on the starboard bow, broke off the stanchions and rail and covering-board on the starboard side.

11 int. State what occasioned the splitting of the vessel's bow.

Ans. The occasion was the colliding with the propeller; she had a bowsprit about twenty feet long, and it being a glancing blow sideways, it formed a powerful lever, which I think was the occasion of her opening on the starboard bow.

12 int. How long was it after the collision before the schooner sunk?

56 Ans. I think it might have been about one hour.

13 int. Could you, by any efforts of yourself and crew, have prevented her sinking after collision?

Answer. We made all the efforts we could make in endeavoring to stop the leak and keep the pumps going.

14 int. Did the schooner Caledonia show any light before and at the time of the collision? and if so, describe the light, and where the same was placed.

Answer. At the time and before the collision she was carrying a bright light on the pall bit; it was a signal lantern ordinarily used on board vessels.

15 int. How far could your light have been seen on that night by persons on the deck of another vessel directly or nearly in front of you?

Answer. He would see it half a mile for sure; it was a good bright light.

16 int. What watch or lookout had you on deck before and at the time of the collision?

Answer. It was my watch on deck at the time; there was one man at the lookout and one at the helm.

17 int. Where was you standing, and where was the man at the lookout standing at the time when the propeller's light was first seen?

57 Answer. I was standing aft on the quarter-deck, on the weather or starboard side; the lookout was standing forward by the windlass, near the windlass.

18 int. How long had the lookout been at his post before the light of the propeller was seen?

Answer. He had been there from six o'clock; from six to eight was the watch—the dog watch.

19 int. How long had you been on deck?

Answer. I was on deck all day.

20 int. How long had your light been lit before the light of the propeller was seen?

Answer. The light was lit early at dusk.

21 int. Had the man on the lookout any other employment than to keep a lookout?

Answer. No, sir; not at the time.

22 int. Were you on the lookout before and at the time of the collision?

Answer. My attention was a good deal engaged with the man at the helm; I was always on the lookout.

23 int. What was the first intimation you had of the approach of another vessel?

Answer. I saw the light.

24 int. In what direction did you see the light?

58 Ans. I saw the light right ahead over the starboard bow, as I stood on the quarter-deck looking forward.

25 int. What color was that light, and did you see more than one?

Ans. That light was red; I saw no other light.

26 int. Did the man on the lookout see that light; and if so, did he see it before or after you did?

(Objected to.)

Ans. I think he saw it just before I did.

27 int. How long was it after you saw the light that you heard the steam-whistle?

Ans. I could not define the time; it was very short; I walked from the quarter-deck forward, and when I got to the bow the whistle sounded.

28 int. How long was it after the whistle sounded that the collision took place?

Ans. Half a minute, or a few seconds.

29 int. Could you have avoided the collision by putting your helm to starboard instead of to port; and what would have been the effect had you put your helm to starboard immediately after the whistle sounded?

Ans. I could not have avoided the collision by putting the helm to starboard; had I put the helm to starboard he would have run into me about mid-
59 ships.

30 int. Did you regard the sounding of the whistle once as a signal which way to steer?

(Objected to.)

Ans. I am aware that among steamers and propellers the sounding of the whistle once means for each to keep on their own side; in this instance it would be for me to put the helm to port.

31 int. Was there room between your vessel and the shore for the propeller to have passed on your starboard hand?

Ans. Yes, sir.

32 int. Which way was the wind before and at the time of the collision?

Ans. The wind was to the southward and westward; perhaps to the westward at the time of the collision.

33 int. What sail was the schooner carrying?

Ans. She was carrying all her fore-and-aft canvas and a reef in her topsail.

34 int. At what rate was she moving?

Ans. Seven or eight knots at the time.

35 int. You have stated, in a former answer, that at about the time of the collision your course was SE. by S. ½ S., (southeast by south half south.) State for how long previous to the collision you had held this course.

60 Ans. I think I had run that course about two hours before the collision.

36 int. Did you receive any notice from the man on the lookout forward of a light being in sight previous to your seeing it yourself?

Ans. Yes, sir.

37 int. How long previous?

Ans. Just a moment before.

38 int. Do you mean by your last answer that it was just sixty seconds before?

Ans. No, sir.

39 int. Can you state how many seconds it was between the time the lookout notified you that there was a light ahead and the time of seeing it yourself?

Ans. It might be a second; it might be two. I turned around immediately and saw it myself.

40 int. Do you know what was the value of the schooner Caledonia previous to the collision?

Ans. No, sir.

41 int. Have you seen the propeller Ottawa since the collision? If so, state where.

Ans. The first time I saw [her] after the collision was up the north branch of the Chicago river.

42 int. What was she doing at that time?

Ans. She was doing nothing; she was laying alongside the dock; she had just come in, I think?

61 43 int. Have you seen her since that time; and if so, where?

Ans. I think I have seen her twice since passing up the river.

44 int. Do you know of the propeller Ottawa having undergone any repairs since the collision? If so, state what repairs.

Ans. I went on board of her the first time I saw her lying at the dock. I saw she had received considerable damage on her larboard quarter. I enquired of somebody on board—I don't know who they were—how the damage occurred.

The answer was, a schooner collided with them on Lake Huron. Showed me a cap of a bowsprit the vessel left on board, I judged belonging to the schooner Caledonia.

45 int. Was there anything about this particular bowsprit cap different from ordinary bowsprit caps by which you recognized i as belonging to the Caledonia?

Ans. There may be other vessels having them similar. There was no eye-bolts; it was only half-wooded where the jib-boom went through; no wood on the top.

46 int. Was it in these particulars different from those usually carried by vessels?

62 Ans. I stated before there might be other vessels carrying such; generally they have an eye-bolt underneath, to which they hook the martingale. Some caps are bolted through, and have a plate which prevents their coming off. This one was simply laid on the tenon, so that it would come off easily.

47 int. Have you ever met the master of the propeller Ottawa sinch the collision, and were you present at any conversation between said master and any other person or persons concerning the collision? and if so, give the time and place when and where the conversation took place, who was present, and what was said by the said captain.

(Objected to.)

Ans. I was present at the underwriter's office on Water street; have forgotten what day and date it was; it was since the collision; the captain of the propeller Ottawa was present. Mr. Van Wagenen, Mr. Proudfoot, Capt. Davidson, the inspector, and some others I did not know. There was a good deal said; I can't recollect what it was. We were endeavoring to draw the relative positions of the vessel and propeller. In conversation, the captain of the

63 propeller Ottawa stated he saw my light half an hour before the collision. I don't remember anything more that would bear on the question.

48 int. At or about the time of the collision did you discover what propeller had collided with you?

Ans. No, sir.

49 int. Have you any means of knowing what propeller it was other than above stated by you?

Ans. No, sir.

By agreement of parties the further examination is postponed until to-morrow, Thursday, at three o'clk p. m.

J. T. MOULTON,
U. S. Commissioner.

THURSDAY, *October 11th*, 1860.

Resumed the examination pursuant to adjournment.

50 int. Was the course you was steering just before the collision, which you have described southeast by south half south, the usual and proper course for a vessel bound from Chicago to Buffalo?

Ans. The usual course from Presque Isle to Thunder bay was southeast by south. I was pretty well out in the lake, and I wished to haul close

64 under the land. About six o'clock I altered the course about half a point to the southward.

51 int. How was you occupied during the hour previous to the collision?

Ans. I was not occupied with anything in particular, except the general look-out. It was squally off the land. I had to stand by to attend to the canvas, keep a look-out ahead, and attend to the man at the wheel.

52 int. How long was it after the propeller's whistle sounded that the

Ans. Well, I gave the order to put the helm hard a-port immediately on the sound of the whistle, and the order was obeyed immediately.

53. Did the vessel answer her helm readily at the time.

Ans. Yes, sir.

54 int. How far had she swung to her helm before the collision occurred?

Ans. Well, I saw her swing nearly the whole length of the propeller, and thought she would go clear entirely.

55 int. Judging from the manner in which the vessels collided, and the point at which the propeller was struck, how must the propeller have been heading in reference to your own course at the moment of collision?

65 Ans. The vessel was luffing up, and I did not look at the compass. I could not tell how she was heading at the time of the collision, as I did not look at the compass. She must have headed very near at right angles when I was on my course.

56 int. Which bow of the schooner came in contact with the propeller?

Ans. The larboard bow.

57 int. How did it happen that the starboard bow was damaged?

Ans. I accounted for it from the position of the vessel. It made a glancing blow; and while she struck on the larboard bow, and carried away the chain-plates, stanchions, and fore-rigging, all but the after-shroud, she was at the same time at such an angle she took the bowsprit too. The force of the blow on the bowsprit opened her on the starboard side.

58 int. State what efforts, if any, were made by yourself and crew to save the vessel and cargo after the collision.

Ans. I think the first effort made for the saving of the vessel was hailing the propeller, to get her to tow us into shallow water. We received no answer from the propeller; could not make them hear; endeavored to work her in with canvas, but found we could make nothing. The wind was pretty well off

66 the land and the sea heavy, the vessel drifting constantly out. We let go the small anchor, then endeavored to stop the leaks; got over the bow; discovered that the knight-heads and the wood-ends were open about six inches from the stern on the starboard side. By this time she had made a great deal of water, and was rapidly settling. We then saw nothing could be done to save the vessel, and we prepared to abandon her and take to the boats.

59 int. On which side do steam-vessels usually carry the red lights?

Ans. On the port side—the larboard side.

60 int. Are you acquainted with the value of vessels so as to be able to form an opinion as to the value of one after having examined her?

Ans. I can form my own opinion pretty near to the value of a vessel.

61 int. State what, in your opinion, was the value of the schooner Caledonia as she was just before the collision.

(Objected to.)

Ans. I should judge she was worth four thousand dollars. The owners refused an offer of over three thousand dollars for her.

By agreement of parties the further examination is postponed until to-morrow, Friday, at half past nine o'clock a. m.

J. T. MOULTON, *U. S. Commissioner.*

67 FRIDAY, *October 12th*, 1860.

Examination resumed pursuant to adjournment.

Cross-examined by Mr. Dexter.

1 c. int. You say that on the 13th of September you left Chicago with the schooner Caledonia, bound for Buffalo; state the names of all on board, and how long they and each of them had sailed with you.

Ans. The mate's name is John Anderson; one of the seamen, Richard

Sherry; another, Thomas Jenkins, or Jennings, I can't say which—I think Jenkins; ordinary seaman, John Stewart; and a man whose name was Walker Ellis, seaman; and the cook, Thomas Jennings. The mate sailed with me from the time the vessel first fitted out, all the season; Walker Ellis was on board over a month; Thomas Jenkins, I think, was about two or three trips; I shipped John Stewart on the day we went out; Richard Sherry had been on board, I think, two or three trips; the cook, I think, had been on board two or three trips—I think two trips.

2 c. int. After the schooner Caledonia was loaded on the 13th of September referred to, was she in good sailing trim, or was she not loaded too deep?

Ans. She was in good sailing trim; she was not loaded too deep.

68 3 c. int. After she was loaded how much side had she above water midships?

Ans. I did not measure it, but I should judge not less than ten inches; her first streak or top plank was eight inches wide, and the water was a little below that—did not come quite up to it.

4 c. int. What course did you first steer after leaving Chicago on the thirteenth of September, and how long did you keep that course?

Ans. We steered north-northeast when we first left for the Manitoo; I can't state how long I kept that course without my memorandum.

5 c. int. What was the first land you made on the east shore?

Ans. I think it was Point Betsey.

6 c. int. What course did you steer after you made Point Betsey?

Ans. I don't like to state from memory in that way; I might have looked over and posted myself.

7 c. int. Do you mean to say that you do or do not remember what course you steered after you made Point Betsey?

Ans. I mean to say I would not trust my memory.

8 c. int. State explicitly whether you do remember what course you sailed after making Point Betsey?

69 Ans. I do not.

9 c. int. What was the next land you made after Point Betsey?

Ans. Big Beaver.

10 c. int. What course did you steer after you made the Big Beaver?

Ans. I have it on my memorandum; I would not trust my memory.

11 c. int. Do you mean to say that you do not remember what course you steered after you made the Big Beaver?

Ans. Yes, sir; I do not remember.

12 c. int. Can you state what the general course would be for a vessel to steer on her way from Chicago to Buffalo, steering her true course after she made the Big Beaver?

Ans. I don't think I could from memory.

13 c. int. Can you state what course a vessel would steer, steering her true course, on her way from Chicago to Buffalo after she made Point Betsey land?

Ans. Not from memory.

14 c. int. What was the next land you saw after the Big Beaver?

Ans. The Manitoes.

15 c. int. Do you mean the Manitoes of Lake Michigan or Lake Huron?

Ans. I mean the South Manitoes of Lake Michigan.

70 16 c. int. What course did you steer after you made the said South Manitoes, in Lake Michigan?

Ans. I would not like to state from memory.

17 c. int. Do you mean to say that you do not remember?

Ans. Yes, sir.

18 c. int. What was the next land you saw after the said South Manitoes, in Lake Michigan?

Ans. I don't remember now.

19 c. int. Do you mean to say that you do not know what the next land you saw was?

Ans. I mean to say that I don't remember the first land we made after making the Manitoes; we made the Manitoes at nightfall.

20 c. int. Whereabouts were you on the following morning at daylight, after leaving the Manitoes?

Ans. I was in the neighborhood of Waubleshance light; I can't state positively from memory.

21 c. int. What course was you steering at daylight on the morning after you passed the Manitoes?

Ans. Could not state from memory.

22 c. int. What was the next land you made after leaving Waubleshance light?

71 Ans. I would not like to state anything positively from memory; one thing I remember: we came to anchor under Old Point Mackinac Saturday forenoon.

23 c. int. About what time in the forenoon of Saturday did you come to anchor?

Ans. I don't remember positively; I think it was about nine or ten o'clock.

24 c. int. From what course was the wind blowing at that time, and was it light or heavy?

Ans. I cannot state from memory positively how the wind was; it was blowing very heavily running through the straits.

25 c. int. You say in your answer to the last interrogatory that the wind was blowing very heavy running through the straits; state running which way.

Ans. The wind was down the straits—a fair wind.

26 c. int. At what hour in the day did you heave anchor from under Old Mackinac?

Ans. If my memory is correct, we hove up anchor on Sunday morning about seven or eight o'clock.

27 c. int. How was the wind at that time, and what was the first course you steered?

Ans. I could not positively say from memory.

72 28 c. int. What courses would a vessel steer, steering her true course, on her way from Chicago to Buffalo, after heaving anchor under Old Pt Mackinac?

Ans. Would not like to state from memory.

29 c. int. What was the next point of land you remember to have seen after leaving Old Point Mackinac?

Ans. I don't remember anything particularly until Presque Isle; I have got it down on my memorandum, every point I made and every course I steered.

30 c. int. Where is the memorandum to which you refer, and can you produce it?

Ans. I think I can; I think it is either at Stewart's office or his house.

31 c. int. Have you looked for the memorandum to which you have referred, and did you find it?

Ans. I found part of it.

32 c. int. What part did you find, and what part can you not find?

Ans. I found the first part, from the commencement of the voyage; the part particularly describing the collision, and from which my protest was copied. I think I left it at Milwaukie; the protest was copied from the whole.

33 c. int. With whom at Milwaukie did you leave it?

73 Ans. I left it with nobody in particular, but think I lost it there or otherwise; I thought I had no use for it after the protest was made.

34 c. int. Have you made search for it at Milwaukie since you lost it, or in any other place or places where you think you may have lost it? If so, state what place or places, and the particulars of the search or searches you so made.

Ans. I did not know at all that it was lost till yesterday.

35 c. int. Does the memorandum that you have found cover your voyage from the time you left Chicago until just before the time of the collision? State fully and particularly up to what time it extends.

Ans. The memorandum extends until 4 p. m., Sunday, the sixteenth, when we were abreast of Presque Isle.

36 c. int. Is this memorandum that you found, and now have, the only memorandum that you made of your voyage from the time you left Chicago until Sunday, the sixteenth, at 4 p. m., when you were abreast of Presque Isle?

Ans. Yes, sir; that is all I have.

74 37 c. int. Was this memorandum that you found, and now have, made by you; is it in your handwriting; and when was it made by you? State fully and particularly.

Ans. It was made by me in my handwriting as the transactions occurred, as I made the observations and thought to make the remarks.

38 c. int. Do you mean to state positively that you made said memorandum from time to time during said voyage, as the incidents stated in said memorandum occurred, and at the precise time that each of said incidents occurred and said observations were made?

Ans, Yes, sir; the transactions are written down as they occurred. I did not take the memorandum in all cases at the precise time they occurred; I could not in the night stand on deck with a paper in my hand and write; they were always taken down at the first opportunity; if they occurred in the night, the first thing in the morning.

39 c. int. In the twenty-ninth cross-interrogatory you were asked what was the next point of land you remember to have seen after leaving Old Point Mackinac; in your answer you say: "I don't remember anything

75 particular until Presque Isle; I have got it down on my memorandum every point I made and every course I steered." Have you since that answer referred to the said memorandum, and will you now state what was the next land you saw after leaving Old Point Mackinac?

Ans. Since making said answer I have not read said memorandum.

40 c. int. Will you read said memorandum carefully over, and refresh your memory on all points contained therein?

Ans. I have read it carefully over.

41 c. int. After reading said memorandum, will you now state what was the next land you saw after leaving Old Point Mackinac on said voyage?

Ans. I was running along the land.

42 c. int. After reading said memorandum, state what course you steered on the said voyage after leaving Old Point Mackinac, and how the wind was when you left.

Ans. For courses I depended entirely on my chart, and shaped them according to where the vessel was. The memorandum says the wind was southwest; I think it was a fresh breeze; had all sail set.

76 43 c. int. Do you mean to say that the course you steered after leaving Old Point Mackinac on said voyage is not put down in said memorandum?

Ans. I don't see it there; it is not there.

44 c. int. At what time in the day on said Sunday, September 16th, did you make Bois Blanc island?

Ans. I don't remember.

45. c. int. Did you pass between Bois Blanc island and south shore?

Ans. Yes, sir, I did.

46 c. int. Is it recorded in said memorandum at what time on Sunday, the

sixteenth, you made Bois Blanc island; and if so, what course you were steering when you made said Bois Blanc island?

Ans. It is not recorded there.

47 c. int. At what time on said Sunday, 16th, did you make Sheboygan?

Ans. The memorandum says I was abreast Sheboygan light at 8 o'clock in the morning of Sunday, the 16th.

48 c. int. How far from Sheboygan light were you at 8 o'clock in the morning of Sunday, the sixteenth?

Ans. I don't remember positively.

49 c. int. What course were you steering when you made Sheboygan light, and how was the wind?

77 Ans. I don't like to state positively what the course was; I think the wind was as last stated.

50 c. int. Is it recorded in said memorandum what course you were steering when you made Sheboygan light, and how the wind was?

Ans. It is not.

51 c. int. On a voyage from Chicago to Buffalo, sailing your true course, do you change your course between Old Mackinac Point and Sheboygan light?

Ans. Not with a fair wind; it might vary a little; I depend on my chart for courses always.

52 c. int. Did you on the said voyage change your course between Old Mackinac and Sheboygan light?

Ans. I don't remember whether I did or not.

53 c. int Is any change in your course on said voyage between Old Mackinac and Sheboygan light recorded in said memorandum that you found and now have?

Ans. No.

54 c. int. Did you change your course on said voyage at Sheboygan light; and if so, how did you change it?

Ans. I don't remember now.

55 c. int. On a voyage from Chicago to Buffalo, sailing your true course, would you change your course at Sheboygan light; and if so, how?

78 Ans. It would depend upon the position of the vessel and how the chart laid; I should go by the chart.

56 c. int. Do you mean to say that with a vessel in some position at the Sheboygan light, on a voyage down, you would change your course; and if she was in other and different position you might not change your course?

Ans. If the wind was ahead or scant, so that the vessel would not steer, the vessel might be compelled to change her course.

57 c. int. Do you mean to say, on a voyage from Chicago to Buffalo, that if the wind was not ahead and scant, but fair, you would not change the course of a vessel when abreast of Sheboygan light?

Ans. I would consult my chart and go according to the courses as laid down.

58 c. int. Is the last answer all the answer you can make to the last interrogatory?

Ans. It is all the answer I wish to make, and all I can make.

59 c. int. Is any change of course at Sheboygan light recorded in said memorandum that you found and have?

Ans. No.

60 c. int. Do you mean to be understood by that, that in point of fact you made no change in your course at Sheboygan light?

79 Ans. I can't tell; I went by the chart.

61 c. int. If you had made any change in your course at Sheboygan light, would it not be set down in said memorandum?

Ans. Not of necessity; there are several other courses not down on the memorandum.

62 c. int. Do you mean to say that on said voyage you sailed courses that you did not put down on the said memorandum?

Ans. Yes, I did not put down all of them.

63 c. int. What rule did you observe in deciding what courses you would put down and what you would not put down in said memorandum?

Ans. No particular rule; according to the circumstances and the occasion. In heavy weather I would be more attentive in putting down.

64 c. int. Why did you put down in said memorandum some of the courses you sailed, and not others?

Ans. I judged they were of no great importance; most of the time going down Lake Michigan and through the straits we had heavy weather; I thought in case of accident they would be important.

65 c. int. What was the next land you saw on said voyage after passing Sheboygan light?

Ans. The memorandum makes notice of making Presque Isle at 4 p. m. on Sunday, the 16th.

66 c. int. What course were you steering and how was the wind when you made Presque Isle?

80 Ans. We were steering southeast by south. I think the wind was about the same as last stated.

67 c. int. How far from the land were you when you made Presque Isle?

Ans. I can't state positively; may be about six or eight miles.

68 c. int. On your said voyage, from Chicago to Buffalo, do you remember to have seen the Sleeping Bear?

Ans. Yes, sir, I remember to have seen Sleeping Bear Point.

69 c. int. After having read the said memorandum, can you now state what course you were steering when you made Point Betsey on said voyage.

Ans. It ain't mentioned in the memorandum, and I can't state positively.

70 c. int. Is not Point Betsey one of the leading headlands and most important point in the navigation of Lake Michigan?

Ans. Yes, sir; Point Betsey is a very prominent point.

71 c. int. After having read said memorandum, can you now state what course you were steering when you made the Sounth Manitow?

Ans. It is not in the memorandum, and I would not like to state from memory.

81 72 c. int. Is not the South Manitow a very important point in the navigation of Lake Michigan?

Ans. Yes, sir.

73 c. int. What course were you steering when you passed Waubleshance light?

Ans. In the memorandum it is east, quarter north.

74 c. int. When you speak of the Big Beaver, do you mean the Big Beaver island at the north end of Lake Michigan?

Ans. I mean the Big Beaver island.

75 c. int. What course were you steering on said voyage when you made Thunder Bay light?

Ans. Was steering southeast by south half south.

76 c. int. How far were you from the land when you made Thunder Bay light?

Ans. I should judge about six or eight miles.

77 c. int. After making Presque Isle light, at what point between Presque Isle and Thunder Bay light did you change your course?

Ans. I changed my course about six o'clock; I can't say at what point it was; it might have been about twelve miles past Presque Isle.

78 c. int. Did you change your course at any time between Sheboygan light and the time when you were twelve miles past Presque Isle?

Ans. No, sir.

79 c. int. How did Thunder Bay light bear when you made it?

82 Ans. I could not state positively, but think it bore about south; I saw it about two points on the weather bow.

80 c. int. Was the schooner Caledonia a good steering vessel?

Ans. She steered as well as vessels ordinarily steer.

81 c. int. How near could she be kept to her course in running before a heavy sea and wind?

Ans. Well, I could steer myself and be sure between two points; I know that running down in the night in the straits she went off more than that at times before I took in canvas.

82 c. int. Who were the able seamen and who the ordinary seamen to whom you have referred? Give the names.

Ans. John Stewart was the ordinary seaman; the other three were able seamen.

83 c. int. Did you ever before this voyage, as captain, sail a vessel from Chicago to Buffalo? If so, state when and what vessel.

Ans. No, sir; I never did.

84 c. int. Was it a rule with you to consult the mate before writing up your log or memorandum?

Ans. Yes, sir.

85 c. int. Was your memorandum kept by noticing incidents as they occurred by yourself and the mate together, or by yourself from memory at the first convenient time?

83 Ans. I did not pretend to keep a regular systematic log; when anything occurred that I wanted to remark, I consulted with the mate and entered it.

86 c. int. What record, if any, was made of incidents that occurred off your watch?

Ans. I can't remember of any.

87 c. int. Do you know Leonard Barber, of Chicago?

Ans. I dealt some with him when he kept groceries with Samuel Johnson.

88 c. int. During the month of September, eighteen hundred and sixty, did you any time have conversation with said Barber, in the city of Chicago, about the schooner Caledonia?

Ans. I think I met him once somewhere in the street, and talked with him a few moments; I don't remember what the conversation was about.

89 c. int. Did you not say to him in a conversation held in September, eighteen hundred and sixty, in the city of Chicago, that the owner of the Caledonia was fitting her up for the grain trade; and that you did not wish to go in her, as she was not fit, for she loaded so deep, even with lumber, she loaded scuppers to, and with a load of grain in heavy weather we would all go up; or words to that effect?

Ans. I don't remember anything what the conversation was about;

84 I could not state; I did not say so to Barber to my knowledge.

90 c. int. Do you remember what you and Barber conversed about at the time you say you met him?

Ans. Not particularly.

91 c. int. Can you now state any one topic on which you conversed?

Ans. I think I asked him what business he was in.

92 c. int. Can you remember any other topic on which you conversed with Barber?

Ans. No, sir.

93 c. int. Might you not have had conversation on other subjects which you do not now remember?

Ans. I don't know.

94 c. int. Will you say that you did not at that time converse with Barber on any other subject than the one you have mentioned?

Ans. I can't tell what we were talking about.

95 c. int. After you left the schooner Caledonia at the time of the collision, how did you get to Milwaukie, where you made your protest?

Ans. We went in to the shore with the boat on the next morning a few miles further down towards Thunder bay; on the beach I hired a fishing boat to take me and the crew to Presque Isle, and there I hired another boat to take
85 me out to the propeller Iowa, that was passing by, which landed me at Milwaukie.

96 c. int. Do you know Captain Jones, of the propeller Iowa?

Ans. I know him.

97 c. int. Was he captain of the Iowa when you went on her from off Presque Isle to Milwaukie?

Ans. Yes, sir.

98 c. int. Did you converse with him in regard to the collision of the schooner Caledonia?

Ans. Yes.

99 c. int. Did you tell Captain Jones, of the Iowa, when you were on board of the Iowa on your passage from Thunder bay to Milwaukie, that on the evening of Sunday, the 16th, at about seven and a half o'clock, you saw a steamer's lights, white and red, on the larboard bow, and that you heard the whistle and put your wheel starboard, and that you did not know how the collision happened, or words to that effect?

Ans. I do not remember having told the captain any such thing.

100 c. int. Do you say that you did not tell Captain Jones any such thing?

Ans. Yes, sir.

101 c. int. Did you tell Captain Jones, on the Iowa, at the time above referred to, that on the evening of Sunday, the 16th, about seven and a half o'clock,
86 you saw a steamer's lights, red and white, on the larboard bow, and that you heard the whistle and put your wheel a-port, and that you did not know how the collision happened, or words to that effect?

Ans. I don't remember having said any such thing; I did not speak much to anybody.

102 c. int. Do you know Captain Davidson, marine inspector of the port of Chicago?

Ans. Yes, sir.

103 c. int. Did you ever converse with him in regard to said collision since the same took place?

Ans. Yes, sir.

104 c. int. Did you not say to him, in a conversation held in Chicago since the said collision, that you saw a red and white light a little after you heard the whistle, and that you ordered the helm to be put a-port, but did not know whether she came up or fell off, as she was steering heavy, or words to that effect?

Ans. No, sir.

105 c. int. Did you not say to Captain Davidson, in a conversation held in Chicago since the said collision, that just before the collision you ordered the helm a-port, but that you did not know whether she came up or yawed off?

87 Ans. I don't remember ever having said so.

106 c. int. What were the names of the men in the mate's watch on said voyage, on Sunday, the sixteenth of September?

Ans. Thomas Jenkins, I think, and John Stewart.

107 c. int. Which watch had the deck at the time of the collision?

Ans. My watch.

108 c. int. Were all hands on deck at the time of the collision?

Ans. No, sir; I think not.

109 c. int. Name the men in your watch on Sunday, the sixteenth.

Ans. Walker Ellis and Richard Sherry.

110 c. int. Who was at the wheel at the time of the collision, and who on the look-out?

Ans. Walker Ellis was at the wheel, and Richard Sherry on the look-out.

111 c. int. Was there more than one man at the wheel at a time on Sunday, the sixteenth?

Ans. No, sir.

112 c. int. At the time the light of the steamer you collided with was first discovered, did you give the man at the wheel any order before you went forward?

Ans. No, sir.

113 c. int. On what part of the vessel were you when you first gave an order to the man at the wheel?

Ans. Forward at the windlass, on the weather bow.

88 114 c. int. State the exact language of the order you then gave.

Ans. It was hard a-port.

115 c. int. On which bow of the Caledonia did you carry your small anchor?

Ans. On the starboard bow.

116 c. int. How many minutes was it after the said collision, before you let go your anchor?

Ans. I should think it was all of half an hour.

117 c. int. What was the situation and condition of your large anchor at the time and after the collision?

Ans. It was thrown up in aft of the windlass, and was so covered up with the rail and the stanchions that it would take two hours to clear it.

118 c. int. When you finally left the schooner Caledonia, how much water had she?

Ans. I could not tell; she was settled down, the decks about level with the water; forward she was settling fast.

119 c. int. Have you stated all you know on that subject?

Ans. Yes, sir.

120 c. int. Did you sound the well before you left her?

Ans. No; the pumps had not sucked for a long time, though they were continually worked; there were two pumps.

121 c. int. Is it from these facts alone that you have stated that you were led to abandon the vessel?

Ans. From these facts and my positive knowledge, seeing the water pouring into her; she was settling, and I knew she would soon go down.

89 122 c. int. How long were you on board of her, from the time of the colli ion until you abandoned her?

Ans. I have no positive means of ascertaining, but should judge an hour and a half; possibly, at the most, two hours.

123 c. int. What material did you make use of, if any, in trying to stop said leak produced by the collision?

Ans. I used oakum, bed-quilts and canvas.

124 c. int. Where were the wood-ends parted from the stem? If so, how far down and on which side?

Ans. The wood-ends were parted, so far as we could ascertain, about six inches at the top; she soon settled, and the sea breaking over, it was impossible to ascertain how far down she was started; it was on the starboard bow; the covering-board was started off forward.

125 c. int. Was there a heavy sea on at that time?

Ans. A pretty large sea.

126 c. int. From what direction was the sea?

Ans. The sea, I should think, was the southward and westward.

127 c. int. How long were you in pulling to the land after you abandoned the vessel?

Ans. I should think some five hours; there was a large sea the first two or three miles, and we went very slow.

128 c. int. How many oars did you pull?

Ans. Four.

129 c. int. From what fact do you state the depth of the water at the place where you abandoned the vessel?

90 Ans. From sounding with a lead.

130 c. int. How did Thunder Bay light bear from the vessel when you abandoned her?

Ans. I did not take a bearing, and could not say.

By agreement of parties, the further examination is postponed to to-morrow, Saturday, at 10 o'clock a. m.

J. T. MORTON, *U. S. Commissioner.*

SATURDAY, *Oct.* 13, 1860.

Resumed the examination in pursuance of adjournment.

131 c. int. In your answer to the one hundred and twenty-ninth cross-interrogatory, when asked from what fact you state the depth of the water at the place where you abandoned the vessel, you say, from sounding with the lead; did you make these soundings yourself personally, and how thoroughly and fully did you make them, and what depth of water did you find?

Ans. I made them personally; I sounded, I think, twice; I sounded several times, as the vessel was drifting off, while they were clearing the anchor; I think I found between eighteen and twenty fathoms.

132 c. int. Do you state the depth of the sounding now merely from recollection?

Ans. I do.

133 c. int. Did the memorandum, which you say you lost, and which you say contained an account of the last portion of the voyage between

91 Presque Isle and the time you abandoned the vessel, contain the soundings to which you referred in your answer to the last interrogatory?

Ans. Yes.

134 c. int. Did you have that memorandum before you when you entered protest at Milwaukie?

Ans. Yes, sir.

135 c. int. Then the depth of the water, as you stated it in the protest, must be correct in point of fact, must it not?

Ans. Yes, sir.

136 c. int. Did you, in said protest, make the following statement: The vessels immediately separated, the propeller passing on; they manned pumps and set them at work, and got tackle to the bows to support foremast, and endeavored to work the vessel ashore, but the head-sails being gone, she would not work to windward; sounded and found ten fathoms water?

Ans. I think I did.

137 c. int. Did you, in said protest, make the following statement: About 7 o'clock p. m. made Thunder Bay Island light, bearing south, about eight miles distant?

Ans. I think I did.

138 c. int. Did you, in said protest, make the following statement: "At three o'clock a. m., Saturday, September fifteenth, made Skillogotethe and

92 Waubleshance light, steering east, quarter north?

Ans. I think I did.

139 c. int. If you did make such statement, was it taken from the said memorandum of your voyage, and is it the true course?

Ans. I don't remember whether it was on the memorandum or not; I think the course was so laid down on the chart.

140 c. int. When you made sail Skillogotethe and Waubleshance lights, about how did each of the lights bear, and about how far off from them were you?

Ans. I don't remember.

141 c. int. Had you passed Skillogotethe light before you saw it, or did you make it some distance ahead?

Ans. Made it some distance ahead.

142 c. int. Did you take soundings at any time with your lead and line to ascertain the depth of water, while running between Presque Isle and the point of collision; and if so, at what time?

Ans. I don't remember whether I took soundings or not.

143 c. int. If you had taken soundings would you not recollect it?

Ans. I might and I might not.

93 144 c. int Is not Old Point Mackinac an important headland in the navigation of the straits?

Ans. Yes, sir.

145 c. int. Is not Bois Blanc island an important point of land in the navigation of the straits?

Ans. Yes, sir.

146 c. int. Is not Sheboygan Point an important point of land in the navigation of the straits?

Ans. Yes, sir.

147 c. int. In the schooner Caledonia, how much below the main deck was her cabin floor?

Ans. About three feet.

148 c. int. What distance was it from the top of her plank-sheer to the top of her rail?

Ans. She had a low rail; I should think it was over two feet.

149 c. int. What was the depth of the hold of the Caledonia?

Ans. About seven feet, I should think.

Direct examination resumed by Mr. Smith.

62 int. Have you said, in answer to the ninth cross-interrogatory, that the next land you made after Point Betsey was Big Beaver island?

Ans. No, sir.

63 int. What answer did you give to that interrogatory?

Ans. Sleeping Bear.

94 64 int. Where is Old Point Mackinac—on which shore of the straits?

Ans. On the southern shore.

65 int. Why did you come to anchor under Old Point Mackinac?

Ans. The wind was scant; I think at the time the sea was very heavy—heavy weather.

66 int. Would your course through the straits have been different from what it was, if you had not come to an anchor under Old Point Mackinac? And if so, in what respect would it have differed.

Ans. It would have been different in this respect: I would have been out further in mid-channel.

67 int. How much further?

Ans. Might have been six or eight miles.

68 int. If, in passing through the straits, your course had been six or eight miles further off towards mid-channel, would you, in running your true course, have changed your course at Sheboygan light; and if so, how would you have changed it?

Ans. In running the true course, I would have changed the course at She-

boygan light; I would not like to state courses positively; from memory, it would have been easterly.

69 int. In running from your anchorage, under Old Point Mackinac, bound to Buffalo, is there any change in your true course when off Sheboygan
95 light?

Ans. I don't think we changed the course; we ran all the way along the land to "Forty-mile Point."

70 int. In answer to cross-interrogatory twenty-four, you say, "it was blowing very heavy running through the straits;" do you mean to say that the wind was running through the straits, or while your vessel was running through the straits?

Ans. I mean while the vessel was running through the straits in the night.

71 int. About how far from the land were you when off Sheboygan light?

Ans. I don't remember; it might have been five or six miles, perhaps more.

72 int. Were you out of sight of Michigan shore at any time after leaving Old Point Mackinac?

Ans. No, sir.

73 int. In answer to cross-interrogatory number sixty-four, you say, "I judged they were of no great importance;" what did you judge to be of no great importance?

Ans. I judged it to be of no importance to put down all the remarks, but only when it was heavy weather.

74 int. In answer to cross-interrogatory one hundred and twenty, you
96 say, "the pumps had not sucked for a long time;" why did not the pumps suck?

Ans. We could not pump fast enough to make them suck.

75 int. Why did you go forward before giving the order to put the helm hard a-port?

Ans. To see if I could distinguish the vessel.

76 int. What do you mean by distinguishing the vessel?

Ans. I mean if I could see the vessel that carried the light.

77 int. Why did you wish to see the vessel before giving your order to the wheelman?

Ans. If I could have seen the vessel I could be more sure how she was heading—her exact position.

78 int. Why could you not pump fast enough to make the pump suck?

Ans. Because the water came into the vessel a great deal faster than the pumps could throw it out.

79 int. How long a time elapsed between the time when you sounded and found eighteen or twenty fathoms, and the time when you sounded and found ten fathoms?

Ans. It is hard to tell positively; the time we were working around it might have been an hour.

97 80 int. What were you and your crew doing during that time?

Ans. We were stopping the leak, clearing the anchor, pumping the vessel.

Cross-examination resumed.

150 c. int. Is the memorandum now handed to you by the commissioner, and marked Exhibit A, and attached to your deposition in this case, the one to which you have referred in your testimony as containing an account of the said voyage, as far as the said memorandum details said voyage?

Ans. It is.

Direct examination resumed.

81 int. At or about the time when you gave the order to put the helm hard

a-port, did you hear the mate give the same order; and if so, was it before or after you gave the order, and how long before or after?

Ans. I heard the mate give the order immediately after.

LAWRENCE J. BANGS.

Subscribed Oct. 13, 1860.

J. T. MOULTON, *U. S. Com.*

98 *Dep'n of Rich'd McSherry.*

And on the fifteenth day of October aforesaid, Richard McSherry was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, and did thereupon, upon examination, depose testify and say:

My name is Richard McSherry; am aged twenty-three years; seaman; reside in Chicago.

1 int. How long have you been a seaman?

Ans. About six years.

2 int. On what vessel did you last sail, and on what voyage was she bound when you last sailed in her?

Ans. The Caledonia, bound from Chicago to Buffalo.

3 int. Do you know of the Caledonia having met with a collision on that trip? and if so, state when and where it occurred.

Ans. Yes, sir; in Lake Huron, about eight o'clock on Sunday night; don't know what date of the month it was.

4 int. In what part of Lake Huron did the collision occur?

Ans. Between Middle island and Thunder Bay island.

5 int. On what part of the vessel were you standing just before the collision occurred?

99 Ans. Standing on the starboard bow, just forward of the windlass.

6 int. How long had you been standing there, and how was you employed?

Ans. From six o'clock, keeping a look-out.

7 int. Had you anything else to do during that time except to keep a look-out?

Ans. No, sir, nothing else.

8 int. State how the collision occurred.

Ans. The propeller was coming right ahead with a red light a little on our starboard bow; whenever I saw the light I sang out to the captain there was a light a'head; the captain came forward and looked at our light; the propeller blew her whistle; I heard the whistle a few seconds after I sang out to the captain; she was right down on us in no time; the captain sang out then for the helm to be put down—put a-port; it was put down immediately, and the vessel come to; had not room enough to clear her; catched on the propeller's quarter with one port bow.

9 int. What damage did the Caledonia receive, if any, by the collision?

Ans. Pulled the jib-boom and bowsprit out of her and stove in her port bow.

10 int. Did you see any other light on board the propeller than the one you have mentioned?

100 Ans. No, sir.

11 int. Did you hear the propeller's whistle at any other than the time you have mentioned?

Ans. No, sir.

12 int. How many times did the whistle sound at that time?

Ans. Once.

13 int. Had you seen the propeller's light at any time before the time mentioned?

Ans. No, sir.

14 int. When the order was given to put the schooner's helm a-port did she answer her helm readily?

Ans. Yes, sir.

15 int. Just before the time of collision did the Caledonia show any light; and if so, what sort of a light, and where was it placed?

Ans. She showed a bright light on the pall-bit.

16 int. How long before the collision occurred had this light been burning?

Ans. It was put there when it began to get dark.

17 int. How far could the Caledonia's light have been seen on that night by a person on the deck of another vessel approaching nearly ahead?

Ans. Could have been seen a good way off, near a couple of miles off.

101 18 int. Who was on deck just before and at the time of the collision?

Ans. There was the captain, myself, and man at the wheel.

19 int. How long had the captain been on deck?

Ans. From six o'clock.

20 int. What was he doing during the time that he was so on the deck?

Ans. Walking backwards and forwards.

21 int. When you first saw the propeller's light could you tell whether it was a steamer or sailing vessel?

Ans. No, sir.

22 int. Which way was the wind just before and at the time of the collision?

Ans. The wind was about two points free on the starboard side.

23 int. How much of the Caledonia's side was out of water amidships?

Ans. About a foot and a half, as near as I could judge.

24 int. How long after the collision was it before the Caledonia sunk?

Ans. About an hour and a half.

25 int. What was done, if anything, by the captain and crew of the Caledonia, after the collision, to save the vessel?

102 Ans. They were pumping, some of them; they were getting up a hawser, thinking the propeller would come back and catch hold of them; got a tackle to the mast-head to keep the foremast in her, thinking to work ashore; the propeller went away from us; we drew the starboard cable up on deck and cleared the anchor, and let go in eighteen or twenty fathoms of water; keep two pumps going, and she settling down fast; we stopped on board of her till the water was level with the decks, then we got into the boat.

26 int. Was any effort made to stop the leak; and if so, what?

Ans. Yes, sir; there was two of them went down the forecastle, and some of them over the bow, and tried to stop it.

27 int. Did any one hail the propeller?

Ans. Yes, sir; all hands got on the rail and hailed her.

28 int. What course was the Caledonia steering just before the collision?

Ans. I don't know what course she was steering; she was running down along the land.

29 int. How long had she been running the same course?

Ans. I could not say.

30 int. Had she changed her course during the time you stood at the bow?

Ans. No, sir.

103 31 int. Do you know on which side 'tis customary for steamers to carry their red light on the lakes?

Ans. On the port side.

32 int. Do you know on which tack a sailing vessel would show a red light according to custom on the lake?

Ans. A red light on the starboard tack.

33 int. Which tack would a steamer be on showing a red light?

Ans. Port tack.

Cross-examined by Mr. Dexter.

1 c. int. Was the night of the collision a very dark night?

Ans. Yes, sir.

2 c. int. How far could you see a man on board vessel that night?

Ans. I couldn't see him thirty feet off.

3 c. int. During your look-out did you go aft to see how or what course the vessel was steering?

Ans. No, sir; 'twasn't my place.

4 c. int. You say that the captain was walking backwards and forwards; do you mean that he was walking for some time previous to the collision?

Ans. Yes, sir.

5 c. int. On what part of the vessel was he so walking; from forward aft and from aft forward?

Ans.

104 6 c. int. Had his walk been confined to the starboard quarter, could you have seen him at all?

Ans. No, sir.

7 c. int. At the time of the collision what was the position of the bows of the two vessels as they approached and were very near each other?

Ans. The propeller was crossing our bows; she was not much more than twenty feet off when I saw the light.

8 c. int. At the time when you first saw the light, and when you say the propeller was about twenty feet from you, at what point did the propeller's bow bear from you?

Ans. I couldn't tell at what point; she was coming right down on us; her bow was to the starboard of us.

9 c. int. State from what facts you say, that when the captain of the Caledonia gave the order to put the wheel a-port, the vessel minded her helm.

Ans. I know by her coming to; by her sails flapping in the wind.

10 c. int. Are you able to state, when on a look-out on a dark night, and without going aft to see the compass, whether a vessel with a free wind makes any change in her course.

Ans. Yes, sir, if there were any stars out.

11 c. int. How slight a change, whilst standing as lookout, could you detect in a vessel's course by the aid of stars?

105 Ans. A quarter of a point or less.

12 c. int. Are you in the habit, when on look-out, of gazing at the stars to see what course the vessel is steering, and what change she makes in her course if any?

Ans. No, sir; I leave that to the officer of the watch; I keep a look-out for vessels.

13 c. int. On the night of the collision were any stars visible at the time of the collision?

Ans. Yes, sir.

14 c. int. Did you on that night during your watch, previous to the collision, observe the course of the Caledonia in relation to any stars?

Ans. Yes; when the wheel was ordered down I looked at the stars to see if the vessel was coming to.

15 c. int. Did your observation of the stars show you that she was coming to?

Ans. Yes, sir.

16 c. int. What stars did you observe, and what was their position from the vessel?

Ans. They were ahead; I don't know what stars.

17 c. int. Do you recollect seeing the north star; and if so, how did it bear from the vessel?

Ans. No, sir; I don't recollect seeing the north star; the star I saw bore ahead.

18 c. int. Do you know, when you see it in the heavens, a combination of stars called the Dipper?

Ans. No, sir.

106 19 c. int. Is it from your observation of the stars on the night of the collision that you state that the Caledonia had not changed her course while you stood at the bow on look-out?

Ans. I never looked at the stars till the time of the collision to see whether she was minding her helm or not.

20 c. int. Which fact makes you the most certain that she minded her helm, the flapping of her sails or your observation of the stars?

Ans. By looking at the stars; I was certain she come to by the star.

21 c. int. Were there many stars visible at the time you refer to?

Ans. There was a few; they were very dim.

22 c. int. In making your observation of the stars on that night did you do it simply by looking at the star or stars at different times, or did you do it by the aid of some object; if so, what object?

Ans. By looking at the star; I looked at the star when the helm was put a-port, and kept my eye on it to see if she was turning or coming to.

23 c. int. Was there any object between you and the star?

Ans. There was no object; no.

24 c. int. Aside from your observations of the stars on that night, had
107 you any means of knowing whether the vessel changed her course or not during your look-out at the time of the collision?

Ans. No, sir.

25 c. int. How, then, can you state whether her course was changed or not at any time previous to the collision and during your look-out, from six to eight?

Ans. I can't state.

26 c. int. Then you mean to say that you do not know whether she was kept on her course previous to the collision or not, and during your watch?

Ans. No, I could not say; I was forward all the time.

27 c. int. When you speak of starboard tack do you mean that one side of the vessel was to the wind; and if so, which side; or do you mean that she had her starboard tacks aboard; and if so, which side would they bring to the wind?

Ans. Her starboard tacks aboard would bring her starboard side to the wind, and that is what I mean when I speak of starboard tack.

28 c. int. What sort of a light would a steamer show with her starboard tack aboard, or what with port or larboard tack aboard?

108 Ans. A green light; port tack aboard, a red light.

29 c. int. What lights would a steamer show going free?

Ans. Would show a bright light midships, red light on the port side, green light on the starboard side.

30 c. int. Would the position of her lights be changed if she was going with the wind forward of the beam?

Ans. She would carry her lights the same way.

31 c. int. On the night of the collision did you see the propeller's light before any one else on board the Caledonia?

Ans. Yes, sir.

32 c. int. Are you certain that only three persons were on deck at the time of the collision?

Ans. The mate might have been up; I couldn't say; there were only three that I know of.

33 c. int. After you sung out "light ahead," did the captain come forward where you stood; and if so, how near to where you stood, and what did he do next?

Ans. Yes, sir, he came forward; looked at our light to see if it was burning; he was about a couple of feet from me; then we heard the whistle blow; see the boat coming right down on us; then he ordered the wheel to be put down; she was that close to us, we could not clear her.

109 34 c. int. In your answer to interrogatory twenty-three, when asked how much of the Caledonia's side midships was out of water, you say "about a foot and a half, as near as I could judge." At what time did you look at her side, and did you measure how much she was out of water?

Ans. I looked at it when she lay at the elevator and after she was loaded. I did not measure it.

35 c. int. In your answer to interrogatory twenty-four, you say, "about an hour and a half." Did you see the Caledonia sink?

Ans. No, sir.

36 c. int. Were you present at Milwaukie September 21st, when the captain of the Caledonia entered protest? If so, did you hear the protest read over at that time?

Ans. Yes, sir, he read it to all hands; the captain read it to all hands.

37 c. int. Are the facts and circumstances set forth in that protest true and correct so far as you know?

Ans. Yes, sir.

38 c. int. Did you on the 22d of September, 1860, appear before Samuel T. Atwater, a notary public in the city of Chicago, and make oath to the truth and correctness of the circumstances and facts as set forth in said protest?

110 Ans. Yes, sir.

39 c. int. Is it not stated in said protest as follows: "They manned pumps and set them at work and got tackle to the bows to support foremast, and endeavored to work the vessel ashore; but the head-sails being gone, she would not work to windward; sounded and found ten fathoms water;" and if so stated, is it the truth?

Ans. It is so stated, and 'tis the truth.

40 c. int. What was the condition of the windlass and fall-bit after the collision?

Ans. I don't know anything about it; I didn't take notice to it.

41 c. int. What did you make the tackle fast to when you tried to support the foremast?

Ans. It was the fish tackle to take the anchor on board with; it was made fast round the mast-head.

42 c. int. What was the other end made fast to, if anything?

Ans. It was made fast to something forward of the windlass; I cannot say what it was; I don't recollect what it was.

43 c. int. How many days have you been waiting in Chicago to give your testimony in this case, and who got you to remain; and what are you paid for staying, and who pays you?

Ans. Two weeks last Saturday; the captain told me they wanted me to remain here; I don't know who is to pay me; he did not tell me who

111 was to pay me.

Direct examination resumed.

34 int. What kind of a light was this red light of the propeller that you saw?

Ans. A dim light.

35 int. How long was Thunder Bay light in sight from where you stood previous to the collision?

Ans. I think it was an hour and a half before the collision.

36 int. Did you see the Caledonia's light after you left her, and for how long after you left her?

Ans. I saw it, and couldn't say how long; it was pretty dark.

his
RICHARD + McSHERRY.
mark.

Subscribed October 15th, 1860.

J. F. MOULTON, *U. S. Commissioner.*

Dep. of John Anderson.

And on the same day John Anderson was first duly cautioned and sworn by me to testify the truth, the whole truth, and nothing but the truth, in the said cause, and did thereupon, upon examination, depose, testify, and say:

My name is John Anderson; am thirty-nine years of age; occupation, seaman; place of residence, Chicago.

112 1 int. How long have you been a seaman?

Ans. Twenty-two years.

2 int. How long have you sailed on the lakes?

Ans. This is the ninth season.

3 int. On what vessel did you sail last; and on what voyage was she bound when you last sailed in her?

Ans. Caledonia; bound to Buffalo from Chicago.

4 int. What was the condition of the Caledonia as to seaworthiness on her last voyage?

Ans. In good condition, as far as I know.

5 int. Do you know of the schooner Caledonia having met with a collision on that trip? If so, state when and where it occurred.

Ans. She had a collision off Thunder Bay Island light about eight miles, with a propeller; the Thunder Bay Island light bore south.

6 int. What was the date of the collision, and what time of day?

Ans. Sixteenth of September, about a few minutes before eight in the afternoon.

7 int. What became of the schooner?

Ans. She sunk, sir.

8 int. Was any portion of the vessel or cargo saved?

Ans. No; nothing but the boat was saved.

9 int. How deep in the water was the vessel loaded on that trip, and how much of her side was above water midships?

Ans. She was drawing about eight feet water; about ten inches of her side was above water midships.

113 10 int. Was she on that trip loaded unusually deep?

Ans. No, sir.

11 int. Have you ever known her to be deeper in the water than that?

Ans. Yes, sir; eight foot five inches.

12 int. Do you mean by the last answer that you have known her to draw eight foot five inches?

Ans. Yes, sir.

13 int. Where was you just before the collision took place?

Ans. In the cabin.

14 int. Did you come on deck before the collision took place? If so, how long before?

Ans. About two seconds.

15 int. When you came on deck did you see the propeller; and if so, how long after you came on deck was it before you saw her?

Ans. The first thing I heard was the whistle; that started me, and I came right up and saw her bow about ten feet on our larboard bow.

16 int. When you first came on deck did you look to the schooner's helm, and how was it?

Ans. Yes, sir; the man was putting it hard a-port then, and I sung out to him to put it hard down.

114 17 int. Did the vessel answer her helm readily at that time?

Ans. Yes, sir.

18 int. How far did the schooner swing to her helm?

Ans. Four or five points in coming to, before she catched; she swung till her topsail took aback.

19 int. When you first saw the propeller how was she heading in reference to your own course?

Ans. She was heading right across our course.

20 int. Did you see the propeller's light; and if so, what color was it, and what kind of a light, and did you see more than one?

Ans. I did not take any notice of any light particular till after the collision; then I saw a plenty of lights running about the deck.

21 int. Where did you strike the propeller, and what part of the schooner came in contact with the propeller?

Ans. We struck her with the jib-boom a little aft the beam, then the bowsprit, again upon the larboard quarter.

22 int. What damage, if any, was caused to the schooner by the collision?

Ans. Carried away the jib-boom, bowsprit, knight-heads, and parted the
115 wood-ends all the way from the stem down the starboard side, rails, stanchions, and covering boards on the larboard side, all her fore-chains on the larboard side.

23 int. How long after the collision was it that the vessel sunk?

Ans. About an hour and a half, as near as I could judge.

24 int. What efforts, if any, were made by the captain and crew of the Caledonia, after the collision, to save the vessel?

Ans. The first thing we did after she canted round was to try and get her in shore; found we could not get her in; tried the pumps; she was making water on us; couldn't get the pumps to suck; she was making that fast; hove the lead and found she was drifting off shore; let go the small anchor; got our boat ready; found she was sinking with us. I took a bed-quilt and put it into the hole between the wood-ends and the stem; tramped it down with my feet; could not get it far enough. We got a tackle forward to steady the foremast. We expected the propeller to come back and take us in tow; had she come to us immediately after the collision and taken us in tow I think the vessel
116 might have been saved; had a good chance to tow us to Middle island and put us on the beach.

25 int. Did any on board the schooner hail the propeller after the collision?

Ans. Yes, sir; all hands got together upon the larboard side, and sung out together.

26. Did she answer the hail?

Ans. No, sir; not that we could hear.

27 int. Where was the tackle made fast with which you undertook to steady the foremast?

Ans. To the foremast head; the other to the larboard hawse-pipe.

28 int. How far did the schooner drift out after the collision, before you let go the anchor?

Ans. She drifted from ten fathoms into eighteen or twenty fathoms.

29 int. After the propeller left you, was it possible, by any exertions on the part of the captain and crew of the schooner, to have saved the Caledonia or her cargo?

Ans. No, sir.

30 int. How low down were the wood-ends parted from the stern?

Ans. I couldn't say; they were underneath the water, as far as I could see down with a lanthorn.

31 int. How wide were they parted?

Ans. About eight inches at the top, and went down gradually all the
117 way as far as I could see with the lanthorn.

32 int. Why would not the pumps suck?

Ans. The water was coming in too fast for the pumps to take it out.

33 int. How low down in the water was the vessel when you left her?

Ans. Decks level with the water.

34 int. Did you see the schooner's light after you left her; if so, how long?

Ans. Yes, sir; seen it half an hour after that, after we left her, and that was the last we seen of her.

35 int. Did you see the schooner's light on that night at any time after it was lit, and before the collision?

Ans. Yes, sir; I seen the steward take it out of the cabin.

36 int. How high was the top of the schooner's paul-bit above the deck?

Ans. About five feet.

37 int. What sort of a light did the schooner carry?

Ans. She was carrying a bright light at the time.

38 int. How far could her light have been seen on that night by a person on deck of another vessel approaching nearly ahead?

Ans. About a mile, I should think; a vessel low down in the water,
118 you could see it about a mile; if the vessel was higher you could see it further.

39 int. If what vessel was higher, your own or the one approaching?

Ans. The one approaching.

40 int. How many times did the whistle sound?

Ans. Once.

41 int. Which way was the wind at the time of the collision?

Ans. About southwest and by west.

42 int. What time did you go below that night?

Ans. A quarter past six o'clock.

43 int. Who was at the helm just before you went below, and what course were you steering?

Ans. The man's name was Walter; I forgot the rest of his name. He was steering southeast, and by south half south.

44 int. How far from the land were you just before you went below?

Ans. From six to eight miles, as near as I could judge.

45 int. Have you seen the propeller Ottawa since the collision; and if so, where did you see her, and how long after the collision?

Ans. I see her, I believe, this day fortnight, up the north branch.

46 int. Did you go on board of her at that time; if so, did you see anything peculiar in her appearance? If so, state what it was.

119 Ans. Yes, sir; I seen all her larboard bulwarks, stanchions, and rails smashed.

47 int. On what part of her larboard side was this damage done?

Ans. On her larboard quarter.

48 int. Was there anything peculiar about the cap of the bowsprit of the schooner Caledonia; and if so, in what respect was it peculiar?

Ans. 'Twas a cap that had no eye-bolt at all; the top part of the cap there was no wood, only iron; a pretty rough sort of a weld was on the strap of the cap.

49 int. Have you seen that bowsprit cap since the collision, or one answering to that description? If so, when have you seen it?

Ans. I seen it on board the Ottawa propeller.

50 int. Do vessels on these lakes usually carry a different cap from the one you have described; and if so, how different?

Ans. Most all of them have *have* eye-bolts in the cap for the main ropes and foot-ropes.

51 int. Was the cap of the Caledonia's bowsprit fastened on?

Ans. No, sir; it shipped on to the tenon.

52 int. Did you at the time of the collision discover what propeller had collided with you?

Ans. No, sir.

120 53 int. At the time of the collision, or just before it, was the Caledonia on her true course?

Ans. As far as I know, she was; I was below.

54 int. Would a course southeast by south half south, have been her true course?

Ans. Yes, sir, from where we were, by our compass.

55 int. According to the custom of the lakes, on what tack does a steamer show her red lights?

Ans. On her larboard side.

56 int. On what tack will a sailing vessel show her red light?

Ans. Starboard.

57 int. With the schooner heading southeast by south half south, and with the wind southwest and by west, if a sailing vessel showing a red light were seen ahead a little on your starboard bow, which would be the proper way to put your helm to pass her?

Ans. I would put the helm starboard, and go under her stern.

58 int. If it were a steamer, showing her red light, which way would you put your helm?

Ans. Hard a-port.

121 59 int. Under the usual rules of carrying lights on the lakes, can you tell which way to put your helm when you see a red light ahead, until you ascertain whether it is carried by a sailing vessel or a steamer?

Ans. Not until you ascertain whether it is a steamer or not.

60 int. Was you present when the Caledonia took her cargo on board for that trip?

Ans. Yes, sir; I tallied the grain into her.

61 int. What kind of grain was it, and how much was put into her?

(Objected to.)

Ans. Wheat; I don't exactly; about six thousand one hundred and some odd bushels.

62 int. At what elevator did you take it in?

Ans. We took it in at an elevator on the north branch, I believe Munn's.

By agreement of parties the further examination is postponed until to-morrow, Tuesday, at 10 o'clock a. m.

J. F. MOULTON, *U. S. Commissioner.*

TUESDAY, *Oct.* 16*th*, 1860.

Examination resumed pursuant to adjournment.

63 int. According to the customs of the lakes, where should a sailing vessel carry her light?

Ans. On the pawl bit.

122 64 int. Would a vessel bound from Chicago to Buffalo, in sailing her true course, change her course when off Sheboygan light? If so, what change would she make?

Ans. She would change her course to east from Sheboygan light to Forty-mile Point.

65 int. In sailing from your anchorage under Old Point Mackinaw, bound for Buffalo, would you change your course at Sheboygan light; if not, why not?

Ans. East and by south would carry us from that anchorage to Forty-mile Point.

66 int. Did you run that course; and if not, why not?

Ans. Sometimes the wind would allow us to run it, and sometimes it wouldn't; sometimes we would keep a point higher, and sometimes a point off, just as the wind answered.

67 int. What was the course run by you from your anchorage to Forty-mile Point on that trip?

Ans. East and by south, as near as I could judge.

68 int. What is the true course from Forty-mile Point to Thunder Bay light?

Ans. East, southeast to Presque isle, southeast and by east to Middle island, southeast and by south half south, to within three or four miles of an offing of Thunder Bay island; still that is according to where a man is with his vessel.

69 int. Is this the course run by the Caledonia on this trip?

123 Ans. Yes, sir.

Cross-examined by Mr. Dexter.

1 c. int. Have you sailed on the Caledonia before this present season; and if not, how many trips had you sailed on her before the said voyage to Buffalo; and with what was she loaded on said trips that you sailed before said voyage to Buffalo?

Ans. Not before this season; I have been on her since the twentieth of March; can't state trips; loaded on said trips with wood and lumber.

2 c. int. Was she not loaded with wood or lumber, and if so, which, at the time you referred to, when you say she drew eight feet five inches?

Ans. She was loaded with lumber; she had a deck load.

3 c. int. Before the said voyage to Buffalo, did you ever, at any time, sail on her when she was loaded with grain?

Ans. No, sir.

4 c. int. At the time of the collision, were both the starboard and larboard knight-heads carried away?

Ans. Yes, sir.

5 c. int. At the time of the collision, or just after the collision, when
124 you say you first saw the propeller's lights, state how many of her lights you saw, and their color.

Ans. I could see three or four single lights in men's hands running fore and aft the decks. I did not take any notice of the fixed lights at all, there was such confusion on our own vessel.

6 c. int. Will you say that the propeller did not, at that time, have the usual and customary red light and green lights used by steamers?

Ans. No, sir; I won't say any such thing; I did not pay any attention to them.

7 c. int. Did you, after the collision, go into the cabin for your things, or for any other purpose; and if so, how long before you abandoned the vessel?

Ans. I went into the cabin about fifteen minutes before we abandoned the vessel and fetched my bags and what was in it. I took a lamp and looked at the hawser to see if it was all clear, so in case the propeller came back for us we could have it all ready.

8 c. int. Did you find any water in the cabin?

Ans. No, sir.

9 c. int. Did you see the Caledonia sink?

Ans. No, sir; we saw the light disappear about thirty minutes after we abandoned her, as near as I could judge.

125 10 c. int. On your passage from Chicago to Old Point Mackinac, was the weather heavy, and did you take in considerable water?

Ans. Yes, sir; we had pretty heavy weather. We took in no extra water; nothing more than any other vessel.

11 c. int. Did you not try the pumps after you came to anchor at Old Point Mackinac, and did you not find considerable water?

Ans. Yes, sir; we found considerable water in her then; we had been on a wind about four hours; the vessel laying over, we could not get it out of her.

12 c. int. At that time the pumps did not suck, did they, and would they at any other time until you got the water out of her?

Ans. The pumps sucked at that time, but not until we got the water out of her; they would not at any time until we got the water out of her.

13 c. int. Where were your hawse-pipes on the Caledonia?

Ans. Forward, through the knight-heads.

14 c. int. Were you present at Milwaukie on the twenty-first day of September, 1860, when the captain of the Caledonia entered protest, and did you hear said protest read; and if so, are the facts and circumstances therein truly stated?

Ans. Yes, sir; I was present, heard it read, and they are truly stated.

126 15 c. int. Did you, on the 22d day of September, 1860, before Samuel T. Atwater, a notary public for the city of Chicago, make oath to the truth of the facts and circumstances as stated in said protest?

Ans. No, sir; I made oath to it at Milwaukie, but didn't here.

16 c. int. In that protest it is stated that soundings were made after the collision, and ten fathoms water found. State what you personally know of any such soundings.

Ans. I took the lead myself after she canted round, after the collision, head about northwest. I found ten fathoms water first cast. I believe I hove it four or five times, all the time deepening, as she was drifting off shore.

17 c. int. Do you feel very certain that when you first hove the lead you found ten fathom water?

Ans. Yes, sir.

18 c. int. Did any one else besides you heave the lead; and if so, who?

Ans. The captain; no one else.

19 c. int. It is stated by the captain in his testimony in this case, that after you left anchor under Old Point Mackinac you run the south shore along

127 down, or to that effect. What is your recollection on that subject.

Ans. Of course, we run the south shore down all the way.

20 c. int. How was the wind when you left Old Point Mackinac, and how when abreast Sheboygan?

Ans. About southwest; a pretty strong breeze when we left Old Point Mackinac, but we carried all sail; about the same when abreast Sheboygan.

21 c. int. How long after you passed sheboygan did the wind continue southwest?

Ans. About an hour and a half, I guess; till we got down to Forty-mile Point, as near as I can judge.

22 c. int. You say you were on your true chart course from Middle island to Thunder Bay island. Between those points, did you make sounding; and if so, what water did you find?

Ans. No, sir; I did not say we were on a chart course; I know nothing about charts; we were a point and a half above our course; the wind was off the land, and we were keeping her up as well as we could. I made no soundings until after the collision.

23 c. int. What is the true course from Old Point Mackinac to Forty-mile Point?

Ans. There ain't no true course; there is two courses.

128 24 c. int. Then you cannot sail from Old Point Mackinac to Forty-mile Point without changing your course?

Ans. No, sir.

25 c. int. How far did you, on the said voyage, leave Forty-mile Point on your starboard hand?

Ans. Four or five miles, as near as I could judge.

26 c. int. Give the two courses from Old Point Mackinac to off Forty-mile Point.

Ans. Southeast by east; half east is the first; east to Forty-mile Point from Sheboygan light is the second.

27 c. int. Give the course from Forty-mile Point to off Presque Isle.

Ans. East-southeast.

28 c. int. How far did you, on the said voyage, leave Presque Isle to the starboard hand as you passed?

Ans. I guess about eight miles, as near as I could judge.

29 c. int. Do you mean to say that on the run from Sheboygan to off Thunder Bay light, the wind being off land, you kept the vessel above the usual course?

Ans. Sometimes we did and sometimes we didn't; sometimes she was a point and a half above, and sometimes a point and a half off her course; the average, according as the wind headed us, was about her true course.

129 30 c. int. Do you mean to say that the wind was forward of the beam, and for that reason she fell off and came to?

Ans. I don't mean to say any such thing at all; sometimes the wind was abaft the beam, and sometimes before it.

31 c. int. How was the wind when you were off Middle island?

Ans. The wind was about southwest and by west, pretty steady; then blowing pretty strong; a reef in topsail; not a great deal of sail; squalls.

32 c. int. How far were you from abreast Middle island when the collision took place?

Ans. We were about half way between Thunder Bay island and Middle island. Thunder Bay Island light bore about south half west, as near as I could judge by the compass. We were between eight and ten miles from the shore.

33 c. int. Did you, in a conversation held in Chicago since the collision, make the following statements to Captain Heckie, of the schooner Alvin Clarke: "At the time of the collision, just as I was coming out of the kitchen companion, I saw the propeller's light under the boom, and sung out to the man at the wheel;" or words to that effect?

Ans. No, sir; I told him I saw the propeller's bow, not the light.

130 34 c. int. Under what boom did you tell him you saw her bow?

Ans. Under the three booms.

35 c. int. At what point under the main boom?

Ans. I see it under the three booms under our lee bow; I see it about six feet under the main boom from the mast, I guess.

36 c. int. Did you, in a conversation held in Chicago since the collision, make the following statement to Captain Heckie, of the Pilgrim: "At the time of the collision, just as I was coming out of the kitchen companion, I saw the propeller's light under the boom. I was the first man that saw the light, and I sung out at once to the man at the wheel;" or words to that effect?

Ans. No, sir.

37 c. int. Do you know the mate of the schooner Pilgrim?

Ans. Yes, sir.

38 c. int. Did you, in a conversation with him at Chicago since the collision, make the following statement: "At the time of the collision, just as I was coming out of the kitchen companion, I saw the propeller's light under the

boom. I was the first man that saw the light, and I sung out at once to the man at the wheel;" or words to that effect?

Ans. No, sir.

131 39 c. int. Did you make the same statement as is contained in cross-interrogatory thirty-eight, to the mate of the Alvin Clarke?

Ans. No, sir. All that I said, either to the mate or the captain, was that I saw the bow under the boom; there was no light mentioned, for I couldn't see that and didn't see it.

40 c. int. Was the night of the collision a very dark night?

Ans. No, sir, not such a very dark night.

Direct examination resumed.

70 int. Have you said, in answer to the sixty-fifth direct interrogatory, that a course east by south would carry you from your anchorage under Old Point Mackinac to Forty-mile Point?

Ans. Yes, sir.

71 int. What do you mean when you say, in answer to the twenty-fourth cross-interrogatory, that you cannot sail from Old Point Mackinac to Forty-mile Point without changing your course?

Ans. The mid-channel course is what I stated, southeast by east half east till about four miles off Sheboygan light; then you steer east to Forty-mile Point.

72 int. Is there anything to prevent your running a straight course from your anchorage under Old Point Mackinac to Forty-mile Point?

132 No, sir, nothing to prevent it; there is a shoal off the Sheboygan light, and a reef of rocks off Bois Blanc.

73 int. In running a straight course as described in interrogatory seventy-two, what depth of water would you have passing the shoal off Sheboygan light?

Ans. I don't know exactly what you would have in a straight course; but we sounded and found three and a half fathom on the west end of the shoal.

74 int. How much did you vary from a straight course from your anchorage to Forty-mile Point?

Ans. About a point each way, according to the wind; sometimes one way, sometimes the other.

75 int. In answer to cross-interrogatory twenty-two, you say "the wind was off the land, and were keeping her up as well as we could." Why was you keeping her up?

Ans. We wanted to go close to Thunder bay, so as to keep smooth water.

76 int. Was the schooner Caledonia on that trip loaded deeper than vessels usually are with grain bound from Chicago to Buffalo?

Ans. No, sir.

77 int. At daylight in the morning after the collision, were you in sight of the place where the Caledonia was when you abandoned her; and if so, was she at that time still in sight?

133 Ans. We were in sight of the place; she was not there.

78 int. Have you ever before this trip made the trip from Chicago to Buffalo? If so, how often?

Ans. A great many times; I can't say how often; I was three years in the Buffalo trade.

79 int. Do you know of any repairs having been made to the Caledonia just before this trip? If so, how thoroughly was she repaired, and for what purpose?

Ans. She was all caulked over outside and in, and put two new Sixter keelsons in her; three iron rods to stay her centre box through and through on each side; that was all that was done to the hull; we got some new ropes, a new hawser, and running gear; the repairs were made to fit her for carrying grain.

80 int. When these repairs were finished, was the Caledonia fit for carrying grain?

Ans. Yes, sir.

81 int. Was the Caledonia overhauled and repaired last spring?

Ans. Yes, sir.

82 int. Were her pumps in good working order when you tried them after the collision?

Ans. Yes, sir.

83 int. Do you know how much water there was in her well when you
134 stopped pumping after the collision; and if so, how much?

Ans. I do not, the water was about six inches above her forecastle floor.

84 int. About how deep must it have been in the well to come six inches above the forecastle floor?

Ans. About three feet. I guess.

85 int. What do you mean by pumps sucking?

Ans. When there is no more water in the well.

Cross-examination resumed.

41 c. int. How far down were the knight-heads carried away?

Ans. As far as I could see with a lanthorn under water.

42 c. int. After you saw the steward carry the lanthorn forward, were you on deck until just before the collision?

Ans. No, sir.

JOHN ANDERSON.

Subscribed Oct. 16, 1860.

J. T. MOULTON, *U. S. Commissioner.*

135 *Recalled by libellant.*

86 int. How high was the Caledonia's cabin-floor above the keelson?

Ans. Four feet, about, as near as I could judge.

87 int. When the Caledonia was loaded for her last trip, how near full of grain was she?

Ans. She had about three feet and a half empty hold from the forward part of the fore hatch to the bulkhead.

89 int. Just before she sailed did you examine to see how much water she was drawing? If so, how much was she drawing?

Ans. She was drawing eight feet of water aft; seven feet ten inches forward.

90 int. What peculiarity, if any, was there about the manner in which the bowsprit was secured?

Ans. 'Twas all heavy gear that belonged to the brig Enterprise, that it was secured with.

91 int. Did you at any time before this last trip have any conversation with Walter Ellis, the man who was at the wheel at the time of the collision, as to what his movements would be on his return to Chicago? If so, state what he said.

(Objected to.)

Ans. He told me he was going to New Orleans as soon as he got back,
136 on account of his losing all his clothes on the Caledonia; he could not stop in Chicago during the cold weather.

Cross-examined.

1 c. int. Do you know the mate of the schooner Alvin Clarke; and if so, what is his name?

Ans. I know the man who was mate of her last season; his name is Francis Higgie.

2 c. int. Did you converse with him last fall in regard to the loss of the Caledonia?

Ans. I conversed with him in regard to the accident after it happened.

3 c. int. Did you not make substantially the following statement to him: "I heard the whistle, and came on deck and saw the light, and ordered the wheel to be put to starboard, and helped to put it starboard?"

Ans. No, sir; I made no such statement.

JOHN ANDERSON.

Subscribed Feb'y 18, 1861.

J. T. MOULTON.

Deposition of B. F Davison.

137 And on the tenth day of January, A. D. 1861, B. F. Davison was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, and did thereupon, upon examination, declare, testify, and say: My name is B. F. Davison; am fifty years of age; my occupation is that of marine inspector of, for late board of underwriters; place of residence Chicago, Illinois.

1 int. What are your duties as such inspector?

Ans. Well, I go and look at vessels; sometimes take surveys of them and rate them.

2 int. Did you inspect the schooner Caledonia in September, (1860,) eighteen hundred and sixty, or just previous to her last voyage?

Ans. Yes, sir.

3 int. Please state what was the condition at the time you so inspected her, as to seaworthiness and fitness for carrying grain.

Ans. Well, I thought she was fit to carry grain with the repairs they had put on her; she had just been repaired at that time.

4 int. State the nature and extent of those repairs as nearly as you know.

Ans. She had some keelson put into her, and something else; I cannot
138 recollect without looking at the survey; there was considerable other work done to her; enough to make her seaworthy.

5 int. Did you alter her rate; to what, and from what, did you alter it?

Ans. I altered it from B 2 to B 1.

6 int. Is a vessel rated B 1 regarded as fit for carrying grain?

Ans. Yes, sir; supposed to be.

7 int. Can you state from your recollection about how much those repairs must have cost?

Ans. I can't state; I had not thought about that; I thought enough had been put upon her to make her good.

8 int. How many bushels of wheat could the Caledonia safely carry?

Ans. I could not give the number of bushels; I can't state.

9 int. How much free board or side out ought a vessel of seven-feet hold to show when loaded?

Ans. She ought to show nine inches and five-sixteenths from the water to the deck at the lowest place.

10 int. Could she load even deeper than this and still be safe in ordinary weather?

Ans. Well, if she was a crooked vessel, had a good deal of sheer, she
139 then might be loaded a little deeper, but then this $9\frac{5}{16}$ would make her pretty deep.

Cross-examined by Mr. Dexter.

1 c. int. Do vessels in the grain trade usually load clear down to the extent of their load line?

Ans. Well, as a general thing, vessels don't load down to their load-line.

2 c. int. Is not the load-line, and which, of the Caledonia, you say was 9 5/16, a line fixed by the insurance companies or their inspectors, and beyond which they do not deem it safe to go?

Ans. Yes, sir.

Direct examination resumed.

11 int. Why is it that vessels do not, as a general thing, load down to the load-line?

Ans. Some of them are built with little dead rise, and full fore and aft; some with more dead rise; the vessels with little dead rise and full fore and aft will fill full without sinking below the load-line; only a part of the vessels this rule will cover; there are plenty of vessels up to fifteen and sixteen thousand bushels that carry themselves full, and others right in among them down to ten thousand bushels, that can't begin to do it.

B. F. DAVISON.

Subscribed Jan'y 10th, 1861.

J. T. MOULTON.

Dep. of J. C. Davies.

140 And on the twenty-eighth day of February, A. D. 1861, John C. Davies was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, and did thereupon, upon examination, depose, testify, and say:

My name is John C. Davis; am forty-two years of age; reside in Chicago; occupation is that of seaman, ship-carpenter.

1 int. How long have you been a seaman, and how much of that time have you sailed as master?

Ans. I have been seaman the best part of the time since eighteen hundred and thirty-two; master between seven or eight years of that time.

2 int. Did you know the schooner Caledonia, and did you see her while she was hauled out for repairs previous to her last trip?

Ans. Yes, sir; I saw her two or three times on the ways.

3 int. Did you make any examination of her at all, and with what purpose in view?

Ans. I went to see her on the dry docks to see how strong they were
141 going to make her. Mr. Stewart gave me a half promise that I should be master of her, and I wanted to see her qualifications, and tell what else she needed, if anything.

4 int. What was the condition of the Caledonia after these repairs were finished; was she or not strong and fit for carrying grain?

Ans. Yes, sir; she was strong and fit for carrying grain, fit to go anywhere, and carry any cargo.

5 int. How high was her cabin floor above her keelson?

Ans. To the best of my knowledge it was probably five feet two or three inches.

6 int. Did you see her after she was loaded for her last trip; and if so, did you consider her too deeply loaded?

Ans. Yes, sir; I saw her after she was loaded, and I did not consider her too deep.

7 int. Did you notice how her bowsprit was secured? and if so, state what peculiarity, if any, there was about the manner of securing it.

Ans. Her bowsprit was very strongly secured; in the first place, it fitted very close in the knight-heads; then there was a very heavy band of iron came over it outside of the knight-heads, fastened through the hull with two

142 large iron screw-bolts; there was two sets of heavy iron bowsprit shrouds taken from the Enterprise, a much larger vessel; then two heavy bob-stays.

8 int. Did you take any notice how many feet of water the Caledonia was drawing after she was loaded; and if so, how did you ascertain it?

Ans. That afternoon she was loaded; I went up to see how she was loaded, and examined her; went on board of her and looked round, and on going round her bow I judged her eight-foot mark was about two inches above water.

9 int. Did you notice how near full she was of grain? If so, state.

Ans. I did not, sir; when I went there the hatches were battened down.

Cross-examined by Mr. Dexter.

1 c. int. When you went up to see her, how long was it before she sailed, and did you then expect to sail her?

Ans. When I saw her last it was about two and a half hours before she sailed; I did not expect to sail in her. It was at the commencement of that season I had some expectations of sailing her.

2 c. int. Why did you go up to see how deep she was loaded?

143 Ans. Well, the captain and I had a little private talk about the quantity of grain she would carry. I went up to see, and met the captain coming down. Said he, I am loaded and got my bills. Says I, how much have you got on. He told me he had on sixty-one hundred, but said I could carry five or six hundred more, but she would not trim with it; she would load too much by the head and I went up to see how deep she was loaded; I have stated all the reasons which induced me to go.

3 c. int. Of what kind of wood was the Caledonia bowsprit?

Ans. I think it was pine, sir.

4 c. int. How much side had the Caledonia out of water midships after she was last loaded?

Ans. I think she had from twelve to fourteen inches, as near as I could judge from her looks; I did not measure it, only by the eye.

5 c. int. What vessel did you sail last season?

Ans. I did not sail any vessel last season.

6 c. int. What vessel did you sail the season before last?

Ans. I did not sail any vessel then, either.

7 c. int. What vessel did you last sail, and when and what trade was she in?

144 Ans. The schooner Forrester, in eighteen hundred and fifty-six, in the lumber trade between Grand river and Chicago and Muskegan, principally to Chicago.

8 c. int. How long did you sail her, and did she make any trips below the straits while you sailed her?

Ans. I sailed her pretty near the whole season; she did not sail below the straits.

9 c. int. What vessel did you last sail before sailing the Forrester?

Ans. The schooner Whig, of Buffalo.

10 c. int. How long did you sail her, and in what trade was she?

Ans. I sailed her all the season; she was in the Grand river trade; she did not go below the straits.

11 c. int. What vessel did you last sail before the Whig?

Ans. The schooner Citizen, of Buffalo, in the Buffalo and Cleveland trade; she carried staves, wheat, and merchandise generally; I was in her the whole season.

12 c. int. State how deep, in your opinion, it would be safe for the schooner Caledonia to load with grain for Buffalo; I mean how many inches of side would be the least she would show out of water midships?

Ans. From what I know of the Caledonia I should think from ten to
145 twelve inches would make her safe in any weather except late in the fall, in November or December.

13 int. Had the Caledonia much or little sheer?

Ans. Well, about what you call middling; she hadn't much; she had some—from eighteen inches two feet sheer.

Direct examination resumed.

10 int. In this conversation which you speak of with the captain of the Caledonia about the quantity of wheat she would carry, what was your estimate of how much she could carry?

Ans. I thought about seven thousand bushels; from seven thousand to seven thousand two hundred bushels—in that neighborhood.

11 int. How have you been employed since you sailed the Forrester?

Ans. I have been lumber inspecting, lumber buying and selling, and canal boating, ship carpentering; I have built two canal-boats since that.

J. C. DAVIS.

Subscribed February 28th, 1861.

J. T. MOULTON.

146 *Fees and attendance.*

Bangs	1 to 39	4 days		$6 00
McSherry	41 to 51	5		7 50
Anderson	53 to 76	8		12 00
Davison	77 to 79	1		1 50
Davis	81 to 86	1		1 50
				28 50
Commissioner's wri. 283 fol			$50 60	
adm. 5 oaths			50	
2 exhibits, cert			50	
				51 60

Exhibit A, referred to in the deposition of L. J. Bangs.—(J. T. Moulton, U. S. Com'r.)

SEPTEMBER 13th, 1860.

September 13th, at about 4 p. m., towed out by tug Foster; strong breeze from southeast; steered about N.NE. for the Manitous; secured the boat, hawsers and lines all on deck, caulking cabin windows; at 6 p. m. wind increasing, sea running high, the larboard , clewed up the topsail and took a reef in it and set it at 8 p. m.; wind the same; sea running very high; vessel shipping a great deal of water, and finding her difficult to steer, took 2 reefs in the mainsail; light-ship 12 p. m.; wind the same, and very
147 large sea; light-ship at 2 o'clock a. m. on the 14th; carried away the fore-sheet; nothing worthy of notice transpired through the day to the ship; at 4 p. m. made Point Betsy; 2 vessels in sight on the lee bow; at 8 p. m. abreast south Manitou light-ship; at 10 p. m., strong gale from the southard; made G. Travers's light; sea heavy; took in mainsail, topsail, and in clewing up the topsail parted buntlin; running NE. one-half N. under foresail and jib; at 12 midnight made the light on Beaver island; heavy squalls accompanied rain and thick weather; vessel laboring heavy; at about 3 o'cl'k a. m., Sept. 15, weather clearing, made Skillogelle and Point Waugoshance light; about 7 a. m. passed Waugoshance light, steering east ¼ N., for Old Mackina Head; at 8 a. m. set the mainsail two reef; at 10 a. m. rounded the

point, hauled up under the land, and came to an anchor in 10 fathoms; pumped ship; had a good deal of water in; wind S.SW.; about 20 vessels to an anchor; here rove new topsail gear; at 8 p. m. set the watch light-ship. Sunday, Sept. 16th, wind SW., strong breeze, weather cloudy, with squalls off the
148 land; at 6 a. m. hove up anchor, set all sail, and proceeded down the lake; at 8 a. m. abreast Sheboygan light; at about 4 p. m. abreast Presque Isle; heavy squalls off the land, accompanied with showers of rain.

Bill of lading referred to in the second answer of L. J. Bangs.—(J. T. Moulton, U. S. Com'r.)

CHICAGO, 13*th September*, 1860.

Shipped in good order and condition by Robert Stewart, as agents and forwarders, for account and at the risk of whom it may concern, on board the schooner Caledonia, whereof L. J. Bangs is master, bound from this port for Buffalo, N. Y., the following articles, as here marked and described, to be delivered in like good order and condition as addressed on the margin, or to his or their assigns or consignees, upon paying the freight and charges as noted below, the dangers of navigation, fire and collision, excepted.

In witness whereof the said master of said vessel hath affirmed to two bills of lading of this tenor and date, one of which being accomplished, the other to stand void.

149 Six thousand one hundred and two $\frac{20}{60}$ bushels (6,102$\frac{20}{60}$) number one spring wheat. On delivery of said wheat, Messrs. Hawley & Co. are to pay to the said Captain Bangs the sum of three hundred dollars, ($300.)

L. J. BANGS.

LEES & WALLER, New York,
Care of Messrs. M. S. Hawley & Co., Buffalo, N. Y.

Endorsed: Filed March 25th, 1861.

WM. H. BRADLEY, *Clerk.*

Depositions of respondent.

150 On this day, to wit, the twenty-fifth day of March, A. D. 1861, came said respondent, by his proctors, and filed in said clerk's office the evidence taken in behalf of said respondent in said entitled cause, which said evidence is in the words and figures following, to wit:

ROBERT STEWART
against
THE PROPELLER OTTAWA. } In admiralty.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

In pursuance of an agreement of the parties to the above suit, wherein it was agreed that I, the subscriber, should take the evidence in the said cause, I, J. Tilden Moulton, the commissioner, was attended by Mr. Dexter, proctor for the respondent, and Messrs. Smith and Proudfoot as proctors for the libellant, on the eighteenth day of October, in the year of our Lord one thousand eight hundred and sixty, and from time to time as hereinafter appears, and took the following evidence on behalf of the respondent.

J. T. MOULTON, *U. S. Commissioner.*

Dep'n of Thos. Lock.

151 Thomas Lock was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, and did thereupon, upon examination, depose, testify, and say:

My name is Thomas Lock; thirty-five years of age; reside in Chicago; occupation, porter.

1 int. On what vessel, if any, are you now engaged, and how long have you been so engaged?

Ans. On the propeller Ottawa, since the first day of May last.

2 int. Were you on the propeller Ottawa on Sunday, the sixteenth of September last; and if so, on what lake was she on that day, and on what voyage?

Ans. I was on her on that day; I believe on Lake Huron, coming from Buffalo to Chicago.

3 int. Did you, on Sunday, the sixteenth of September last, trim and prepare the signal-lights of the propeller Ottowa? If so, state what kind of light she had, and when you lighted them, and where you placed them on the evening of Sunday, the said sixteenth of September.

152 Ans. I did trim and prepare them; she had kerosene oil lights; one was white, one green, and one red; I lighted them before dark; I placed one, the white light, on top of the pilot-house; the other two I placed one each side the boat on the upper deck.

4 int. On which side of the boat did you place the red light, and on which side the green light?

Ans. Going up from the after part of the boat, I placed the red light on the left-hand side and the green light on the right-hand side.

5 int. Did the propeller Ottawa, on the evening of Sunday, the sixteenth, collide with another vessel?

Ans. A vessel run into her.

6 int. After you set the lights in their places on the evening of Sunday, the sixteenth, and before the vessel run into the propeller, state whether you saw the said lights, and if so, how many times, before the vessel run into her, and what their condition was *was* when you saw them.

Ans. I saw them several times; could not say how many times; was round on the boat much backwards and forwards; they were all in good condition same as when I put them up.

153 7 int. About at what point on the left-hand side of the propeller Ottawa, as you go from aft forward, did you place the red light, and about at what point did you place the green light on her right-hand side; and did you see said lights, together with the white light, at dark or very soon after; and how did they burn when you saw them, brightly or dimly? and state whether each of said lights had reflectors or not.

Ans. I placed the red lights about the centre of the boat on the side, and the green light at the same place on the opposite side; the lights (green and red) were about midships; I saw all of said lights soon after dark; they burned good; as well as any lights could burn; they all had reflectors.

8 int. Was there on board the propeller Ottawa a certain and fixed place for the red, green, and white lights; and if so, did you, on the evening of Sunday, the sixteenth, put them in their usual places?

Ans. There was a regular and fixed place for each light, and I put them in their proper places.

9 int. About how long before the vessel run into you on that night

154 did you last see the said red, white, and green lights on the propeller Ottawa; and when you last so saw them were they burning well and brightly or dimly?

Ans. I can't say how many minutes; about seven or eight minutes, I suppose; they were burning brightly; I saw the lights burning after the vessel ran into us.

10 int. Was it a part of your duty, after you put the lights in their places for the night, to go round occasionally and see if they were burning well?

Ans. Yes, sir.

Cross-examined by Mr. Smith.

1 c. int. Whereabouts on Lake Huron was the propeller Ottawa at the time she was run into?

Ans. I don't know.

2 c. int. About what time in the evening was it?

Ans. I don't know what time it was; I have no idea of the time?

3 c. int. About how long after you placed the propeller's lights in their places was it that she was run into?

Ans. I don't know how long exactly; twasn't an hour afterwards.

155 4 c. int. On what day of the week, and about what time of the day, did the propeller Ottawa enter Lake Huron on this trip?

Ans. I don't know.

5 c. int. On what day, and about what time of the day, did she pass through the Straits of Mackinac?

Ans. I don't know.

6 c. int. On what did the red and green lights rest when in their places as you have described it?

Ans. There is a box fixed on top of the cabin, and they were put into that.

7 c. int. How high are the sides of the box; and are they as high as the top of the light when the light is in it?

Ans. Those are as high as the top of the lamp; there is but two sides to the box?

8 c. int. Do these sides of the box prevent the green light from being seen in some directions, and allow it to be seen in other directions; and if so, in which directions can it be seen when in the box?

Ans. It would prevent one seeing it from the rear and inboard, and it would be visible in front and starboard, and the red light you would see from the front and larboard, and not from the rear and inboard.

156 9 c. int. When you saw the propeller's lights, about seven or eight minutes before she was run into, where did you stand?

Ans. Forward, as I was walking round.

10 int. Did you at that time see the light of any vessel approaching?

Ans. I did not notice any; I never look after lights.

11 c. int. Was there anybody beside yourself forward on the propeller's deck at that time; if so, who?

Ans. I don't know who was there; there was somebody there; I don't know who.

12 c. int. Can you state positively that any one was there besides yourself; and if so, was there more than one, and what was he or they doing?

Ans. I can state positively that there was some one there besides myself; I think there was more than one; they were doing nothing; standing.

13 c. int. At what point or points were they standing; and can you name any one who was there at the time?

Ans. They were standing on the forward part of the boat, on the forecastle deck; I did not take particular notice where they stood, I am round so much; I could not name any one.

14 c. int. Were you at that time in such a position that you could

57 see the lights themselves; and did you see each of them at that time?

Ans. I did see them; I saw each light as I was walking round.

15 c. int. What kind of a vessel was it that run into you?

Ans. I don't know, sir.

16 c. int. Did you see her at the time of the collision, or before or after?

Ans. I did'nt see her at all.

17 c. int. Where was you at the time?

Ans. In the porter's room.

18 c. int. Was the white light you have spoken of in a box similar to those the others were in? and if it was in a different box, state what was the difference.

Ans. 'Twasn't in any box.

19 c. int. Did the Ottawa stop at Detroit on this trip?

Ans. Yes.

20 c. int. Where did she next stop after leaving Detroit?

Ans. I don't know.

21 c. int. How long after leaving Detroit did that vessel run into you?

Ans. I don't know how long it was.

158 *Direct examination resumed.*

11 int. Did you, on the night the vessel run into you, light and place the signal lamp of the Ottawa at the usual time.

Ans. Yes, sir.

THOMAS LOCK.

Subscribed Oct. 18th, 1860.

J. T. MOULTON, *U. S. Com'r.*

159 *Dep'n of Richard Brosan.*

And on the eighteenth day of the same October, Richard Brosan was by me first duly cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, and did thereupon, upon examination, depose, testify, and say:

My name is Richard Brosan; am twenty-one years of age; reside in Chicago; am a sailor.

1st int. On what vessel are you now engaged, if any; and how long have you been on her?

Ans. On propeller Ottawa; have been pretty near five months on her.

3d int. Were you on her on Sunday, the sixteenth of September last; and if so, in what capacity, and on what voyage was she?

Ans. Yes, sir; I was wheelsman; I was coming from Buffalo to Chicago.

2d int. On that voyage did a collision occur between the Ottawa and some other vessel? If so, state the facts connected with the same.

Ans. A collision did occur; we were on Lake Huron; I should judge we were
from three to five miles from shore; we seen a good many vessels on our
160 starboard bow; we were steering northwest, and we seen a light ahead
a little on our larboard bow; we also saw a light on the starboard bow, and when we had cleared the light on our starboard bow we put our helm to port, and she headed about north, when she got on steady; when we seen that vessel coming she was making right for us; the captain, standing in the wheel-house right with me, blowed the whistle, I should think, four or five minutes before the vessel struck us.

4 int. How far was the light of the vessel that struck you when you first saw it, and did you see the lights of any other vessels; and if so, what and where were they?

Ans. About four or five miles, I should judge; yes, sir; I seen the light of another vessel on our starboard bow.

5 int. At what time did you put your wheel a-port?

Ans. I should judge about eight or nine minutes before the vessel struck us; just as we cleared the light on our starboard bow, we put our helm a-port to clear the light ahead.

6 int. What was your watch at the wheel that night?

161 Ans. From four till eight.

7 int. Did you pass Thunder Bay light; and if so, how long before the collision; and how far from you was it when you passed it?

Ans. Yes, sir; about an hour and a half before the collision; the light was about three to five miles from us when we passed it.

8 int. Was that the last land you saw?

Ans. Yes, sir.

9 int. State where the captain was during your watch.

Ans. In the fore part of my watch he was forward on the forecastle deck; the latter part he was in the pilot-house; he stood right by me.

10 int. From where you stood at the wheel could you see the signal lights of the Ottawa? If so, state what kind of lights they were, and whether they were in their places on that night, and when were they put there.

Ans. Yes, sir; I could see them from where I stood at the wheel; there was a bright light on the top of the pilot-house; the red light on our larboard side, and the green light on our starboard side; they were put in their places
162 on that night; they were put there just at dusk, I should judge.

11 int. During that evening, and before the vessels came together, did you see the signal lights of the propeller Ottawa; and if so, how often, and what was their condition when you saw them?

Ans. Yes, sir; I saw the signal lights of the propeller that evening often enough; they stood right before me all the time; I could not help but see them; they were in good condition; they were burning good.

12 int. How long before the vessels came together did you last see the signal lights of the propeller Ottawa, and how were they burning when you last saw them?

Ans. I saw them all the time; they were right before me; I saw them two or three minutes before the collision; they were burning good.

Cross-examined by Mr. Smith.

1 c. int. About how far from Thunder Bay light was the Ottawa when the collision occurred?

Ans. About ten or twelve miles.

2 c. int. About what time on Sunday, the sixteenth, was it?

163 Ans. From seven to half past seven in the evening; I could not say to a minute, for I had no time with me.

3 c. int. How long after you first saw the light of the vessel which struck you was it that the captain blew the whistle?

Ans. About fifteen minutes, I should think, after we saw the light.

4 c. int. Did he sound the whistle more than once?

Ans. Yes, sir; the whistle blowed right along till the vessel struck us.

5 c. int. Do you say the vessel struck you eight or nine minutes after you had cleared the light that you saw to starboard?

Ans. Yes, sir.

6 c. int. How far from you was this light to starboard when you passed it?

Ans. Pretty close to us; about ten or twenty rods from us, I should think.

7 c. int. What color was that light you saw to starboard?

Ans. A bright light.

8 c. int. Immediately after passing that light, how far to port did you put your wheel?

164 Ans. We were heading northwest as we passed the light, and I put my wheel a-port so that she headed north.

9 c. int. How long did it take to change your course from northwest to north?

Ans. About a minute.

10 c. int. How long did you keep her headed north?

Ans. I headed north all the time up to the time of the collision.

11 c. int. Where were the red and green lights placed on the Ottawa?
Ans. Midships, on the upper deck.
12 c. int. About how far aft the wheel-house?
Ans. About twenty feet, I should think, more or less.
13 c. int. When standing at the wheel, could you see the places where those lights were?
Ans. I could see where the red light was.
14 c. int. Could you see it without turning round?
Ans. Yes, sir.
15 c. int. When standing at the wheel could you see the spot where the bright light stood?
165 Ans. I could see the spot; could not see the light, because it was right over me; I could see the reflection right before me.
16 c. int. After you passed the light which you saw to starboard, did you see any other light to starboard before the collision?
Ans. Yes, sir; there was a good many lights a good way off on the starboard bow.
17 c. int. Did you see any lights to larboard except the one of the vessel that run into you.
Ans. No, sir.
18 c. int. Do you know the name of the vessel that run into you at that time?
Ans. No, sir.
19 c. int. Was the lake rough that night?
Ans. Not very rough.

Direct examination resumed.

13 int. Did the Ottawa steer well?
Ans. Yes, sir.
14 int. Have you any means of stating how far you were from Thunder Bay light at the time of the collision except by looking over the water to the
166 light, and guessing the distance.
Ans. That is all, sir.
15 int. What do you mean by saying that the signal lights of the Ottowa stood right before you?
Ans. As I stood at the wheel I could see the reflection of all three lights by turning round.
16 int. Explain how you stood at the wheel.
Ans. I stood on the larboard side of the wheel-house, with my back to the window of the wheel-house.

Cross-examination resumed.

20 c. int. Whose watch on deck was it during the time you were at the wheel that night.
Ans. The captain's watch.

his
RICHARD + BROSAN.
mark.

Subscribed Oct. 18th, 1860.

J. T. MOULTON, *U. S. Com.*

Dep'n of John B. Warren.

167 And on the twelfth day of February, one thousand eight hundred and sixty-one, John B. Warren was by me first duly cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, and did thereupon, upon examination, depose, testify, and say:
My name is John B. Warren; age, thirty-nine years; I reside in Chicago, Illinois; master mariner.

1st int. How long have you been a sailor; in what capacity, and of what vessel are you at present master, if any?

Ans. I sailed twenty-three years; master twelve years of that time; am now master of the propeller Ottawa.

2 int. How long have you been master of the propeller Ottawa?

Ans. Twelve months.

3rd int. Were you on board the propeller Ottawa on the sixteenth of September last, when she collided with a vessel in Lake Huron? and if so, state the facts connected with said collision.

Ans. I was on board of the propeller Ottawa at the time of such collision on the 16th of last September, about six o'clock in the afternoon. We were off Thunder Bay light, Lake Huron, about three miles from the land; the wind was west northwest, fresh. We headed at northwest about seven or half past seven; we made a bright light ahead, a little on the port bow, and saw the bright light on the starboard bow; pretty well off on the starboard bow. After we had passed the light on the starboard bow we had opened the head-light on our port side; then we put our wheel a-port and steered her at north. After we had but one wheel a-port we lost sight of the bright light that was bearing ahead on our port bow; then the first thing I saw was the vessel bearing right down on us, close aboard on our larboard bow. I then blowed the whistle until she struck.

168

4th int. What time did your evening watch begin on Sunday, the said sixteenth day of September?

Ans. At six o'clock.

5th int. Were you on deck and on the lookout all the time from the time your watch commenced until the collision?

Ans. I was on the lookout all the time; in the wheel-house about a quarter of the time. The wheel-house is so situated that there is a good lookout from it in every direction.

169

6 int. State what lights the propeller Ottawa usually carried, and their respective situations?

Ans. She carried a red light on her larboard side, a green light on her starboard side, a bright light forward midships.

7 int. On the night of the collision were her different lights in their proper places; and if so, what was their condition?

Ans. They were in their proper places and in good condition, all burning first rate.

8 int. Was the propeller Ottawa damaged by the collision? and if so, state how and to what extent.

Ans. It took out nine small stanchions forward of the after gangway; from the after gangway to the stern it took the whole side right out—that is, above the plank-sheer; and the head of the vessel's bowsprit came in contact with the engine, so that we lay disabled for about an hour before we could proceed; disabled one engine so much that I deemed it necessary to come right home with her right to Muskegan. We was calculating to go to Grand Traverse to get a load of lumber, which trip we abandoned on account of the collision.

170

9th int. Did you, after the collision, see or hear anything of or from the vessel that struck you?

Ans. We did not see nor hear anything; that is, any sounds proceeding from any men, but we heard a chain rattling.

Cross-examined by Mr. Smith.

1st c. int. Did you change your course in order to pass the vessel that was to the starboard of you; and if so, how?

Ans. I did not.

2nd c. int. How far off was she when you first saw her?

Ans. I should judge she was about a mile off; the one on the starboard side that we saw.

3rd c. int. How far apart were the courses of these two approaching
171 vessels?

Ans. I should judge they were about—it might be a mile, it might be half a mile; that is, one was that distance to seaward of the other.

4 c. int. How long a time elapsed between the time when you first blew the whistle and the time of the collision?

Ans. It was but a few moments; I mean but a few seconds.

5th c. int. How long a time elapsed between the time when you passed the vessel that was on your starboard side and the time of the collision?

Ans. Well, I should think, as near as I could judge, it was about fifteen or eighteen minutes, as near as I can recollect; it might be a little less. I don't think it could be any over that.

6 c. int. How many points did you change the Ottawa's course in order to make her head north?

Ans. Four points.

7 c. int. Were you in the wheel-house at the time her course was changed?

Ans. I was, sir.

8th c. int. Do you know the name of the vessel with which you collided?

Ans. I have no means of knowing only by hearsay.

172 *Direct examination resumed.*

10 int. How far was the vessel from you that you passed on the starboard hand at the time of passing her?

Ans. About ten rods, as near as I could judge.

11 int. You say that after you passed the vessel on your starboard hand you looked at the light ahead and on the larboard, and saw that she was opening on your port bow. State what you mean by opening.

Ans. That she was going to windward of us, or rather that she was going on the port side.

12 int. Was it because you saw the vessel on the larboard hand going to the larboard side you put your helm a-port; and if not, state why you did so?

Ans. The reason was, that she was going on the larboard side, as near as I could judge, together with the way she had the wind at the time. I could not do any other way.

13 int. At the time of the collision, or immediately before the collision, did you change your helm; and if not, why not?

Ans. I did not. If we had put our wheel hard a-port it would have
173 brought us exactly across her bows by the swinging of the propeller.

Re-cross-examination.

9th c. int. After you passed the vessel that was on your starboard hand were there any other vessels in sight to starboard of you?

Ans. We saw a good many lights to starboard of us well out in the lake.

10th c. int. How far out in the lake should you judge these lights were from you?

Ans. They were well off. I should judge from four to five miles.

11 c. int. Was the lake otherwise clear to the starboard of you?

Ans. Yes.

JOHN B. WARREN.

Subscribed Feb'y 12th, 1861.

J. T. MOULTON, *U. S. Com'r.*

174 February 16th, recalled by respondent.

14 int. In your answer to the third direct interrogatory you say, "After we put our wheel a-port we lost sight of the bright light that was bearing ahead on our port bow; then the first thing I saw was a vessel bearing right down on to us, close aboard on our larboard bow." Do you mean to say that you saw a vessel and her sails bearing down on you close aboard, or that you saw her light?

Ans. I mean to say that I saw a vessel close aboard, and saw no light on that vessel.

15 int. At the time you say you made a light ahead, a little on your port bow, and put your wheel a-port, had you any other object in putting your wheel a-port than to avoid the light you saw? and if so, state what.

Ans. I shaped my course northwest when I was off Thunder Bay Island light. I knew that course would take me inside Middle island. When I put my wheel to port, my object was to avoid the light I saw on our port bow, and clear Middle island reef by going outside of it.

175 *Cross-examination resumed.*

12 c. int. When you first saw the bright light ahead on your port bow could you see the vessel that carried it, or her sails, or anything on board of her, except the light?

Ans. I could not.

13 c. int. When you first saw that light could you tell what course the vessel was steering that carried it?

Ans. I could not.

JOHN B. WARREN.

Subscribed Feb'y 16, 1861.

J. T. MOULTON, *U. S. Com'r.*

Dep'n of Ira Herriman.

And on the thirteenth day of February aforesaid, Ira Herriman was by me first duly cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, and did thereupon, upon examination, depose, testify, and say:

My name is Ira Herriman; am thirty-seven years of age; master mariner; place of residence, Chicago.

176 1st int. How many years have you sailed as master?

Ans. Eight, I think.

2 int. What vessel are you now master of, and to whom does she belong?

Ans. The schooner Cuba. She belongs to me.

3 int. If you were sailing a propeller, and had passed Thunder Bay Island light, in Lake Huron, with the wind west-northwest, you steering a northwest course, and should make a light ahead, a little on your port bow, about four or five miles off, and after taking range you should find the light was opening to port, what course would you pursue to avoid a collision?

Ans. I should probably steer my course, or if I changed it at all, I should steer more to the northward in order to open the light still more.

4th int. Should you consider a vessel in good condition when a blow from another vessel on her bowsprit should open her bows.

Ans. No, sir.

5th int. In your experience as a sailor have you ever known any instance of vessels' bowsprits being carried away by a glancing blow from another vessel?

177 Ans. I know of such instances, and have seen one.

6 int. In the one you saw did the carrying away of the bowsprit open or seriously damage the bow of the vessel?

Ans. It did not; didn't damage the bow of the vessel any at all.

7 int. Did you ever know or hear of a case in which the carrying away of the bowsprit of one vessel by a blow from another opened the bows of the vessel from which the bowsprit was torn?

Ans. Well, I don't know but that I have heard of such instances spoken of by others. I think I heard of one such case last summer. I never saw any such case myself. I don't know as the case I heard talked of that the vessel's bows were opened solely by means of the bowsprit.

8 int. In case of a collision do you consider it good seamanship to abandon a vessel without sounding her well?

Ans. I should not, without trying the pumps or sounding the well, or both.

178 9th int. If the vessel had been leaking before the collision, would trying the pumps alone furnish you with such evidence of the condition of the vessel that would authorize her abandonment, without also sounding her well.

Ans. No, sir.

10th int. If you were sailing a propeller on Lake Huron, off Thunder Bay light, in a dark, stormy night, steering north, and you should see a vessel coming down on your port bow, sailing seven or eight knots an hour, with the wind fresh over her starboard quarter, and she only twenty feet from you, would you make any change in your course?

(Objected to.)

Ans. I think not.

11th int. Would you make any change in your course if she was forty feet from you, and going at the same rate?

(Objected to.)

Ans. No, sir.

12th int. Would you make any change in your course if she was sixty feet from you, and going at the same rate?

(Objected to.)

Ans. I presume not.

179 *Cross-examined by Mr. Smith.*

1 c. int. Have you ever sailed a propeller as master?

Ans. No, sir.

Subscribed February 13th, 1861.

J. T. MOULTON, *U. S. Com'r.*

Dep'n of Chas H. Boynton.

And on the same day last aforesaid, Charles H. Boynton was by me first duly cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, and did thereupon, upon examination, depose, testify, and say:

My name is Charles H. Boynton, am fifty years old next month: I am master mariner, and live in Chicago.

1st int. How many years have you sailed as master?

Ans. Eighteen years.

2nd int. What vessel are you now master of?

Ans. The propeller Alleghany.

3rd int. If you were sailing a propeller, and had passed Thunder Bay

180 Island light, on Lake Huron, the wind west-northwest, or about in that

direction, you steering a northwest course, and should make a bright light ahead, a little on your port bow, say four or five miles off, and after taking range should find the light was opening to port, what course would you pursue to avoid collision?

Ans. I should put my helm to port, and keep off more to the northwest.

4th int. Would you consider a vessel staunch, and in good condition, when a blow from another vessel on her bowsprit would open her bows, without breaking her bowsprit in two?

Ans. No, sir, I would not.

5th int. Do you consider a vessel staunch when a blow from another vessel on her bowsprit would open her bows, even if the blow broke her bowsprit?

Ans. No, sir, I should not.

6th int. In case of a collision, would you consider it good seamanship to abandon a vessel without sounding her well, or without evidence of water on her cabin floor, or both?

Ans. No, sir, I should not.

181 7th int. If you were sailing a propeller on Lake Huron, off Thunder Bay Island light, on a dark night, steering north, and you should see a vessel coming down upon your port bow, sailing seven or eight knots an hour, with the wind fresh over her starboard quarter, and she only twenty feet from you, would you make any change in your course.

(Objected to.)

Ans. No, sir.

Cross-examined by Mr. Smith.

1st c. int. What is the best kind of oil for signal lights on board a propeller?

Ans. I consider the best kind of sperm oil the best.

2nd c. int. Is not kerosene oil better?

Ans. I don't know, for I never tried it.

3rd c. int. Did you ever see a vessel's bowsprit carried away by a blow from a propeller; and if so, how many such instances have you seen?

Ans. I have seen one such instance, that is the only one.

C. H. BOYNTON.

182 Subscribed Feb'y 13th, 1861.

J. T. MOULTON, *U. S. Com'r.*

THURSDAY, *Feb'y 14th*, 1861.

Recalled by respondent.

9th int. Do you know John W. Warren, captain of the propeller Ottawa; and if yea, how long have you known him, and what is his reputation as a master sailor?

(Objected to as irrelevant.)

Ans. Yes, sir, I know him for this last sixteen years. He is considered a first rate man.

10th int. Is the pilot-house on board a propeller a good lookout; and if so why?

Ans. I consider it a good place for a lookout; if the windows are down a man can see astern and all round him better than he can see on deck forward, because when on deck forward there is a cabin behind him, and he can see forward as well as he can on the forward deck.

Re-cross-examined by Mr. Smith.

4th c. int. If, when sailing on the lake, you see simply a bright light ahead, and no other light, what kind of a vessel must it be the carries the light?

183 Ans. That depends on the distance it is off; within a reasonable distance I would suppose it was a sailing vessel. We can see a propeller's bright light long before we can see the colored lights.

5th c. int. At what distance can a propeller's colored lights be seen on a dark night?

Ans. From three to four miles—that is, if they are properly trimmed and burning as they ought to be.

C. H. BOYNTON.

Subscribed Feb'y 14th, 1861.

J. T. MOULTON, *U. S. Com'r.*

Direct examination resumed.

11th int. If a vessel like the Caledonia, loaded with grain so that midships she had ten inches of her side out of water, and should have by a collision an opening made in her bows eight inches wide at the top, and extending down under water further than a man could reach from the deck, or see with the aid of a lantern, how long, in your opinion, would it take her to sink?

Ans. She would go down in half an hour.

184 C. H. BOYNTON.

Subscribed Feb'y 14th, 1861.

J. T. MOULTON, *U. S. Com'r.*

Cross-examination resumed.

6th c. int. In the case of a vessel situated as stated in the last direct interrogatory, could not the sinking of a vessel be delayed by endeavors to stop the leak, such as stuffing bunting, blankets, and so forth; and if so, what length of time might she be kept above water?

Ans. I could not say how long it would stop her leaking, and delay her sinking; how long would depend upon how well they got the hole stopped up.

C. H. BOYNTON.

Subscribed Feb'y 14th, 1861.

J. T. MOULTON, *U. S. Com'r.*

185 *Deposition of James Keaho.*

And on the same day last aforesaid, James Keaho, being first duly cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, and did thereupon, upon examination, depose, testify, and say:

My name is James Keaho; am thirty-four years of age; am sailing and wrecking master; residence, Chicago.

1st int. How many years have you sailed, and how many as master, and what has been your occupation during the last year?

Ans. About seventeen years; master about ten years. My occupation for the last year has been wrecking and marine inspector for the Etna Insurance Company.

2nd int. Do you know John W. Warren, master of the propeller Ottawa; and if so, what is his reputation as master sailor?

(Objected to as irrelevant.)

Ans. I have known him about fifteen years; his reputation among sailors is good for all that I have heard; I have never heard anything against him.

186 3rd int. If you were sailing a propeller, and passed Thunder Bay Island light, in Lake Huron, with the wind west-northwest, or about in that direction, you steering a northwest course, and should make a bright light ahead, a little on your port bow, about four or five miles off, and after taking

range should find the light was opening to port, what course would you take to avoid collision?

Ans. If she was four or five miles off, I would keep my course; if I made any change, I would put my helm to port.

4th int. Do you consider a vessel staunch, when a blow by another vessel on her bowsprit would open her bows?

Ans. I don't think any vessel that has got a fine bowsprit can be split open by a vessel striking it, if she is in good condition.

5th int. Would you consider it good seamanship in case of a collision to abandon a vessel after remaining on board of her an hour or an hour and a half after the collision without sounding her well, or without evidence of water on her cabin floor, or her forecastle floor, or both?

187 Ans. I don't think it would be good seamanship to leave her before you could see some signs about her going down. I would find out if she was making water, and how fast; I would try my pumps to see if I could keep her free, so as to get her somewhere.

6th int. If she had been leaking before the collision, would you deem it good seamanship to leave her simply because her pumps would not suck, or would you not deem it your duty to know positively by sounding her well, or in some other manner, that the water was gaining on you; and if so, how fast?

Ans. I would not deem it good seamanship to leave her simply because her pumps would not suck; I should have tried how much water was coming into that vessel before I left her at all.

7th int. If you were sailing a propeller on Lake Huron, off Thunder Bay Island light, on a dark night, steering north, and you should see a vessel coming down on your port bow, heading right towards your pilot-house, and going seven or eight knots an hour, with the wind fresh over her starboard

188 quarter, and she only forty feet from you, would you make any change in your course?

Ans. I don't see how any change could be made; by the time I could get my wheel a-port, the vessel would be into me.

Cross-examined by Mr. Smith.

1 c. int. If a vessel loaded with wheat had met with a collision, by which an opening had been made in her bows, eight inches wide at the top, and extending down lower than a man could reach with his arm from the deck, or see with a lanthorn held over the bow, if the pumps had been worked steadily for an hour after the collision, and she was evidently settling fast by the head, and the water was already level with her decks; the vessel being six to eight miles off the shore; the sea rough, and the wind blowing, blowing strong off the land, carrying the vessel constantly further off; would you consider it necessary to sound the well or examine the forecastle floor before abandoning her?

Ans. I should look in the hold, and if there was no water on the fore-

189 castle floor, I should not leave her; she could not be sinking, sure; a vessel could not go decks to without water showing itself on the forecastle floor.

2 c. int. Should you not consider a vessel in a sinking condition, or in a condition to be abandoned, when situated as described in the last interrogatory, if, in spite of all the pumping the crew could do, the water still gained upon her?

Ans. The way I look at that is, if a vessel was open eight inches, and as far down, farther down than a man could reach or see, and with decks to, she would sink in ten minutes.

Direct examination resumed.

8th int. Could a vessel like the schooner Caledonia, with seven feet-hold, be decks to in water, and not show water in her cabin?

Ans. She will show water in her cabin floor, without her cabin is on deck.
9th int. Had the schooner Caledonia much, if any, sheer?
Ans. Not much sheer; she is pretty nigh straight.

JAMES KEAHO.

190 Subscribed Feb'y 14th, 1861.

J. T. MOULTON, *U. S. Com'r.*

10th int. If a vessel like the Caledonia, loaded with grain, so that midship she had ten inches of side out of water, and should have by a collision an opening made in her bows eight inches wide at the top, and extending down under water further than a man could reach from the deck, or see with the aid of a lanthorn, how long, in your opinion, would it take her to sink?
Ans. With a hole as big as that, I think she would have sunk in fifteen or twenty minutes.

JAMES KEAHO.

Subscribed Feb'y 14th, 1861.

J. T. MOULTON, *U. S. Com'r.*

192 *Dep'n of John Prinderville.*

And on the same day last aforesaid, John Prinderville was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, and did thereupon, upon examination, depose, testify, and say:
My name is John Prinderville; I am thirty-six years of age; I have been master mariner, and reside in Chicago.
1st int. How many years have you ever sailed, and how many as master?
Ans. I have sailed twenty-two years; fifteen as master.
2d int. Do you know John W. Warren, master of the propeller Ottawa; and if so, what is his reputation as a master sailor?
(Objected to for irrelevancy.)
Ans. I know him; his reputation is good.
3d int. If you were sailing a propeller, and had passed Thunder Bay Island light, Lake Huron, the wind west-northwest, and should make a bright light ahead a little on your port bow, say four or five miles off, after taking range should find the light was opening to port, what course would you take to avoid a collision?
Ans. I should keep on my course; there was no danger of a collision
193 as the light was opening to port. If I made any change I would port my helm.
4th int. Would you consider it good seamanship, in case of collision, to abandon a vessel after remaining on board of her an hour or an hour and a half after the collision, without sounding her well, or without evidence of water on her cabin floor, or forecastle floor, or both?
Ans. I should not consider it good seamanship to abandon the vessel until every exertion had been made to keep her afloat. It was not good seamanship to abandon the vessel without sounding the well or having evidence of water on the cabin or forecastle floor; and if this vessel was sinking, she would show water on her cabin or forecastle floor; I mean these remarks to apply to the Caledonia.
5th int. Are you acquainted with the schooner Caledonia; and if so, what was the position of her forecastle and cabin floors?
Ans. I am; her forecastle and cabin floor was as low in her hold as they could get them to have any room; she was a shoal vessel, and her cabin would be low for deep vessels.

194 6th int. If you were sailing a propeller on Lake Huron off Thunder Bay Island light, steering north, and you should see a vessel coming down on your port bow, heading right towards your pilot-house, going seven or eight knots an hour, the wind fresh over her starboard quarter, and she only forty feet from you, would you make any change in your course?

Ans. Any change in my course would not have avoided a collision if she was only forty feet off.

Cross examined by Mr. Smith.

1st c. int. If a vessel loaded with grain had met with a collision by which an opening had been made in her bows eight inches wide at the top, and extending down under water lower than a man could reach with his arm from the deck; if the pumps had been worked for an hour after the collision, and she was evidently settling by the head, and the water was already level with her deck, would not that be abundant evidence that there was water on her forecastle floor and render it unnecessary to sound her well?

195 Ans. Her pumps would have been of no use to her with a hole of that size; she would have went down in less than an hour from the time the hole was made in her; if they knew that a hole of that size was in her, and her decks were level with the water, sounding her well would amount to nothing, and would be unnecessary.

2 c. int. If the Caledonia, loaded with grain, had such an opening in her bows as described in the last interrogatory, might she not settle by the head until her deck forward was level with the water and not show water on her cabin floor?

Ans. I saw the vessel after she was loaded, when she was towing out; she might settle to her decks forward and not show water on her cabin floor.

3 c. int. Explain why she might not show water on her cabin floor.

Ans. Because it would not have taken a great deal of water to have brought her down decks to, forward.

4 c. int. Would not the grain in her hold have the effect of keeping the water from getting aft?

196 Ans. It would for a little while; she going down by the head too, it would take the water longer to get aft than if the hole had been midships.

5th c. int. Do you consider kerosene oil a good oil for signal-lights on board vessels; and if not, why not?

Ans. I have used some for signal-lights for a tug and found it to answer. It answered our purpose; we were satisfied with it.

6th c. int. Will not kerosene oil cause the lamp to smoke badly and obscure the light when shaken?

Ans. Not any more than I have seen other oil.

7 c. int. How does it compare with sperm oil for use in signal-lamps?

Ans. I don't know much difference for signal-lights.

Direct examination resumed.

7 int. You say you saw the Caledonia as she was towing out of Chicago on her last trip; state your opinion whether she was loaded to an improper and unsafe depth.

Ans. I consider her loaded to an improper depth.

197 8th int. If the Caledonia after being loaded with grain had ten inches of her side out of water, and should by a collision have a hole made in her bows eight inches wide at the top and running down under water further than a man could reach from the deck, and by water taken in through that opening in from an hour to an hour and a half should be brought decks to amidships, would she not after that lapse of time show water on her cabin floor?

Ans. The Caledonia would not have been afloat in an hour, or an hour and a half either, with such a hole in her.

9th int. If the Caledonia, loaded with grain so that she had ten inches of her side out of water, should by a collision have a hole made in her bows so large that in from an hour to an hour and a half she had received water enough to bring her decks to midships, would she not after that lapse of time show water on her cabin floor?

Ans. I think she would.

Cross-examination resumed.

8th c. int. How much side midships did the Caledonia show when you saw her after she was loaded on her last trip?

198 Ans. I can't say exactly; she looked very deep. Well, she might have had ten inches side out. I don't think she showed more than that.

9 c. int. Can a vessel of the build of the Caledonia load deeper with safety than another vessel of the same size but different build?

Ans. Vessels of the Caledonia's depth of hold generally show less side out than a vessel two feet deeper of the same tonnage, but whether they can do so with safety I am not prepared to state.

Direct examination resumed.

10th int. If a vessel like the Caledonia should have an opening made in her bows by a collision through which the water was running, and if her forecastle bulk-head was tight, would not the water have to run through her timbers under the lining, and thus cause the water in a short space of time to settle equally through the vessel?

Ans. The water would go aft abaft the forecastle bulkhead through the timbers as fast as the timbers would admit, and settle equally through the vessel.

JOHN PRINDIVILLE.

199 Subscribed Feb'y 14th, 1861.

J. T. MOULTON, *U. S. Com'r.*

Deposition of R. Prindiville.

And on the fifteenth day of the same month of February, Redmond Prindiville, being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, and did thereupon, upon examination, depose, testify, and say:

My name is Redmond Prindiville; am thirty-four years of age; am master mariner; residence, Chicago.

1st int. How many years have you sailed, and how many as master sailor?

Ans. About twelve, and seven as master sailor.

2d int. Do you know John B. Warren, master of the propeller Ottawa; and if so, what is his reputation as a master sailor?

(Objected to as irrelevant.)

Ans. I do; his reputation is good.

3 int. If you were sailing a propeller and had passed Thunder Bay Island light, in Lake Huron, with the wind west-northwest, or about in that direction, you steering a northwest course, and should make a bright light ahead a

200 little on your port bow, say four or five miles off, and after taking range should find the light was opening a little to port, what course would you pursue to avoid a collision?

Ans. I would put the wheel a-port and let her run off into the lake far enough to be sure I would avoid a collision.

4th int. Do you consider it good seamanship in case of collision to abandon a vessel after remaining on board of her an hour or an hour and a half after collision, without sounding her well or without evidence of water on her cabin floor or forecastle floor, or both?

Ans. I should not consider it good seamanship to abandon a vessel before sounding her well, or having good evidence there was so much water in her that she could not be freed from water.

5th int. If you were sailing a propeller in Lake Huron, off Thunder Bay Island light, on a dark night, you steering north, and should see a vessel coming down on your port bow heading right towards your pilot-house at an angle of about forty-five degrees, and going seven or eight knots an hour with the wind fresh over her starboard quarter, she only forty feet from you, could you
201 make any change in your course?

(Objected to.)

Ans. I should think it would be too late to do anything.

Cross-examined by Mr. Smith.

1st c. int. What do you consider the best oil to use for signal-lamps on board vessels?

Ans. Pure winter-strained sperm oil.

2d c. int. What do you think of kerosene oil for that purpose; is it fit or not; and if not, why?

Ans. Can't say; never used any of it in my time for that purpose.

3d c. int. Do you know of any reason why kerosene oil is not so good as sperm oil for a light on board a vessel in rough weather?

Ans. I do not; I never saw it used on board a vessel.

4 c. int. Do you now use it, or have you ever used it, on board tugs?

Ans. No.

R. PRINDIVILLE.

Subscribed Feb'y 15th, 1861.

J. T. MOULTON, *U. S. Com'r.*

Dep'n of L. Barber.

202 And on the same day Lemuel Barber, being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, and did thereupon, upon examination, depose, testify, and say:

My name is Lemuel Barber; am fifty years of age; was formerly ship chandler and grocer, selling goods, groceries; reside in Chicago.

1st int. Do you know Captain Bangs, of the schooner Caledonia?

Ans. Yes, sir.

2d int. Previous to the last trip of the Caledonia from Chicago, and while she was being fitted for the grain trade, did you have any conversation with Captain Bangs concerning her? and if so, state what.

Ans. I saw Captain Bangs, I think it was in the corner of Franklin and Randolph. He said the owners was fitting up the Caledonia for the grain trade; then I made the remark, I didn't know she was capable to carry grain, for she had been on the beach some time. He said then that the owners were fitting her up as well as they could to go below with grain. He said that he hated to go on her; that he did not consider her capable of carrying grain, she loaded
202½ so deep; she would load down scuppers to with lumber. Come to get a load of wheat on board of her, and they should be caught out in heavy weather, they would all go up.

Cross-examined by Mr. Smith.

1st c. int. Give the date of this conversation.

Ans. In the month of September sixty, I think it was, towards the middle of the month, but I won't be certain about that.

2d c. int. Who, if any one, was present at the time of that conversation besides yourself and Captain Bangs?

Ans. There was no one that I remember of.

L. BARBER.

Subscribed Feb'y 15th, 1861.

J. T. MOULTON, *U. S. Com'r.*

Dep'n of Jno. Wilson.

203 And on the same day, John Wilson, being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, did thereupon, upon examination, depose, testify and say:

My name is John Wilson; age twenty-nine years; am master mariner; residence Chicago.

1st int. How many years have you sailed, and of what vessel are you master now, if any?

Ans. I have sailed fifteen years; am now master of the propeller Robert H. Foss.

2d int. Do you know John B. Warren, captain of the propeller Ottawa; and if so, what is his reputation as a master sailor?

(Objected to as irrelevant.)

Ans. I do know him; his reputation is such as being competent in every respect as a master sailor.

3d int. From what places, and to what places, do the propellers Foss and Ottawa usually run?

Ans. From Chicago to Muskegon, Michigan.

4th int. In sailing the propeller Foss during the last season did you often meet the propeller Ottawa at night; and if so, what was the character of her signal-lights?

(Objected to.)

204 Ans. I have met her frequently, and found her lights always very bright, good lights.

5th int. Would you consider it good seamanship, in case of collision, to abandon a vessel after remaining on board of her an hour or an hour and a half after the collision, without first sounding her well, or without evidence of the depth of water in her hold?

Ans. I would not.

6th int. If you were sailing a propeller on Lake Huron, off Thunder Bay Island light, and see a vessel ahead coming down on your port bow, at angle of about four points, heading right towards your pilot-house, and going seven or eight knots an hour, and she only fifty or sixty feet from you, would you make any change in your course?

Ans. No, sir. I don't think I would have time.

JOHN WILSON.

Subscribed Feb'y 15th, 1861.

J. T. MOULTON, *U. S. Com'r.*

Dep'n of J. C. Nyman.

205 And on the same day John C. Nyman, being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, did thereupon, upon examination, depose, testify and say:

My name is John C. Nyman; am forty-three years of age; formerly a sailor; now engaged in insurance business; reside in Chicago.

1st int. How many years have you sailed; and how many as master?

Ans. Eight years; four years of that as master.

2d int. Do you know John B. Warren, master of the propeller Ottawa; and if so, what is his reputation as a master sailor?

(Objected to.)

Ans. I know him; his reputation as a master sailor is good.

3d int. Would you consider it good seamanship, in case of a collision, to abandon a vessel after remaining on board of her an hour or an hour and a half after the collision without sounding her well, or without evidence of water on her cabin floor or forecastle floor, or both?

Ans. I would not.

206 4th int. If you were sailing a propeller on Lake Huron, off Thunder Bay Island light, on a dark night, you steering north, and should see a vessel ahead coming down on your port bow at an angle of about four points, steering right towards your pilot-house, and going seven or eight knots an hour, and she only forty or fifty feet from you, would you make any change in your course?

Ans. No, sir; I couldn't do it.

5th int. Would you consider a vessel staunch that a blow on her bowsprit by another vessel would open her bows?

Ans. I should not think her as strong as she ought to be; she ought to be built so that the bowsprit would not open her bows.

6th int. Did you see the Caledonia just previous to her departure from Chicago on her last trip; and if so, did you observe how she was loaded; and if so, did her condition in that respect induce you to make any directions to the insurance company you represent; and if so, what?

Ans. I saw her just after she was loaded, lying below Mann & Scott's elevator, and considered her loaded altogether too deep. I went directly to our office

207 and told our book-keeper to take no risk on her at any price, or on any terms.

Cross-examined by Mr. Smith.

1st c. int. What insurance company do you represent?

Ans. Corn Exchange and Commonwealth, of New York, for marine business.

2d c. int. How much side did the Caledonia show above water midships, at the time you saw her?

Ans. A little less than eight inches on the windward side; I measured it with a rule.

Direct examination resumed.

7th int. How much sheer had the Caledonia?

Ans. Very little.

J. C. NYMAN.

Subscribed Feb'y 15th, 1861.

J. T. MOULTON, *U. S. Com'r.*

208 *Dep'n of J. W. Brown.*

And on the sixteenth day of the same month, John W. Brown was first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, did thereupon, upon examination, depose, testify, and say:

My name is John W. Brown; am thirty-four years of age; am seaman and master mariner; reside in Racine, Wisconsin.

1st int. How many years have you sailed, and how many as master? In what vessel do you now sail?

Ans. I have sailed since eighteen forty-six; master since eighteen forty; last season, master of schooner Eclipse, of Chicago.

2d int. Do you know John B. Warren, master of the propeller Ottawa; and if so, what is his reputation as a master mariner?

(Objected to.)

Ans. I do; have known him partially since eighteen forty-five, and well acquainted with him since eighteen fifty; reputation good.

3d int. If you were sailing a propeller on Lake Huron, off Thunder Bay Island light, in a dark night, you steering north, and should see a vessel ahead coming down on your port bow at an angle of about four points, heading
209 right towards your pilot-house, and going seven or eight knots an hour, she only forty or fifty feet from you, would you make any change in your course?

(Objected to.)

Ans. I should make none, as none could be made to avoid a collision.

4th int. Do you consider a vessel staunch if a blow on her bowsprit, by another vessel, would open her bows?

Ans. No, sir.

5th int. Would you consider it good seamanship, in case of a collision, to abandon a vessel after remaining on board of her an hour or an hour and a half after the collision without sounding her well, or without evidence of water on her cabin floor or forecastle floor?

(Objected to.)

Ans. No, sir, I should not.

6th int. Why not? Explain why not.

Ans. From the fact that if there was no water on the cabin floor or forecastle floor in the space of time mentioned in the question, she could not be leaking very fast; simply trying the pump and they not sucking, is no evidence that the water was gaining upon them; the usual mode of ascertaining if the
210 water is gaining or not, is sounding the well and see what depth she already has in her, then try the pumps again for the space of five, ten, or fifteen minutes, as the urgency of the case may be, and then sound the well again to see how fast the water was gaining on them; in the mean time use all proper exertion to stop the leak if the water is gaining; or if not, act accordingly.

7th int. In case a vessel should have an opening made in her bows, and through that was taking in water, would you consider water on the forecastle floor as evidence authorizing you to abandon her; and if not, why not?

Ans. No, from the fact that the hole being in her bow, might nearly fill her forecastle and very little have reached the pump; if the forward bulkhead was properly made, the water would have to go through the lining forward of the bulkhead, and the timbers under the lining, to the pump. An ordinary forecastle full of water would not settle a vessel two inches and a half, or three inches at the outside.

Cross-examined by Mr. Smith.

1st c. int. Who owns the schooner Eclipse, and who did own her last
211 season when you commanded her?

Ans. James M. Walker owns her; Sarah Brown, of Racine, owned her last season when I commanded her.

2 c. int. Have you been present at the taking of all or nearly all the testimony which has been taken in this case; and if so, for what purpose and in what capacity?

Ans. I have been present at a part of the evidence taken and a part only, as a friend and visitor, in part, and in part of my own business in Chicago; have offered them any assistance that I could voluntarily as a friend—both Mr. Dexter and Mr. Rierson.

3 c. int. Have you, since this suit was commenced, spent considerable time searching out evidence, and conversing with the witnesses to be used on the part of the defence; and if so, how much time have you so spent?

Ans. I have not searched for any evidence in this case; I have occasionally talked with the witnesses; all with which I have talked are old friends and fellow-craftsmen. This time I came down from Racine to attend principally to a suit of my own.

212 Respondents admit that Captain John W. Brown, this witness, of Racine, has rendered them advice and assistance in this case from its commencement to the present time, and has been present at most of the testimony taken in this suit.

JOHN W. BROWN.

Subscribed Feb'y 16th, 1861.

J. T. MOULTON, *U. S. Com'r.*

Endorsed: Filed March 25th, 1861.

WM. H. BRADLEY, *Clerk.*

213 *Agreement.*

The agreement in said entitled cause, and also the affidavit of W. H. Arthur, are in the words and figures following, to wit:

U. S. district court, N. dist. Ill.

ROBERT STEWART *vs.* PROPELLER OTTAWA. } In admiralty.

It is admitted between the parties to the above-entitled cause, that L. Hickey, captain of the propeller Lady Franklin, and Wm. Lacey, captain of the propeller Kenosha, will testify that the pilot-house of propellers on the lake is as good a place as any on the propeller for the station of a look-out at night; that it is not the custom, nor never has been, with propellers on the lakes, to carry an extra man as look-out, but that the captain and mate are special look-outs in their respective watches; this stipulation is to have the same force and effect in evidence as though the two above-named captains had given their testimony in this cause to the facts herein stated.

214 L. PROUDFOOT, JR.,
Proctor for Libellant.
WALKER, VAN ARMAN & DEXTER,
Proctors for Respondents.

Aff't of W. H. Arthur.

Captain W. H. Arthur, being sworn, deposes and says, that in the fall of 1860 he was mate of the propeller Iowa, and on her passage up, off Presque Isle, we saw a small boat approaching. We stopped and picked up the said boat's crew. We found, on inquiry, that it was the crew of the schooner Caledonia, which had collided with the propeller Ottawa. The captain of the Caledonia came forward and requested of Captain Jones for a passage of himself and crew to Chicago, as everything went down with the schooner. Captain Jones granted his request. I asked the captain of the said schooner how he came to get lost, and he said he collided with a large propeller about the size of the Iowa. I asked him if the propeller showed any lights, and he said that we saw lights about half an hour before we collided. I asked him what lights he saw, and
215 he replied a red and white light. I told the said captain that the propeller showed her right lights, and was not to blame. I do not recollect the answer he made to it. I asked him how the propeller struck the vessel.

Ans. I have sailed since eighteen forty-six; master since eighteen forty; last season, master of schooner Eclipse, of Chicago.

2d int. Do you know John B. Warren, master of the propeller Ottawa; and if so, what is his reputation as a master mariner?

(Objected to.)

Ans. I do; have known him partially since eighteen forty-five, and well acquainted with him since eighteen fifty; reputation good.

3d int. If you were sailing a propeller on Lake Huron, off Thunder Bay Island light, in a dark night, you steering north, and should see a vessel ahead coming down on your port bow at an angle of about four points, heading
209 right towards your pilot-house, and going seven or eight knots an hour, she only forty or fifty feet from you, would you make any change in your course?

(Objected to.)

Ans. I should make none, as none could be made to avoid a collision.

4th int. Do you consider a vessel staunch if a blow on her bowsprit, by another vessel, would open her bows?

Ans. No, sir.

5th int. Would you consider it good seamanship, in case of a collision, to abandon a vessel after remaining on board of her an hour or an hour and a half after the collision without sounding her well, or without evidence of water on her cabin floor or forecastle floor?

(Objected to.)

Ans. No, sir, I should not.

6th int. Why not? Explain why not.

Ans. From the fact that if there was no water on the cabin floor or forecastle floor in the space of time mentioned in the question, she could not be leaking very fast; simply trying the pump and they not sucking, is no evidence that the water was gaining upon them; the usual mode of ascertaining if the
210 water is gaining or not, is sounding the well and see what depth she already has in her, then try the pumps again for the space of five, ten, or fifteen minutes, as the urgency of the case may be, and then sound the well again to see how fast the water was gaining on them; in the mean time use all proper exertion to stop the leak if the water is gaining; or if not, act accordingly.

7th int. In case a vessel should have an opening made in her bows, and through that was taking in water, would you consider water on the forecastle floor as evidence authorizing you to abandon her; and if not, why not?

Ans. No, from the fact that the hole being in her bow, might nearly fill her forecastle and very little have reached the pump; if the forward bulkhead was properly made, the water would have to go through the lining forward of the bulkhead, and the timbers under the lining, to the pump. An ordinary forecastle full of water would not settle a vessel two inches and a half, or three inches at the outside.

Cross-examined by Mr. Smith.

1st c. int. Who owns the schooner Eclipse, and who did own her last
211 season when you commanded her?

Ans. James M. Walker owns her; Sarah Brown, of Racine, owned her last season when I commanded her.

2 c. int. Have you been present at the taking of all or nearly all the testimony which has been taken in this case; and if so, for what purpose and in what capacity?

Ans. I have been present at a part of the evidence taken and a part only, as a friend and visitor, in part, and in part of my own business in Chicago; have offered them any assistance that I could voluntarily as a friend—both Mr. Dexter and Mr. Rierson.

3 c. int. Have you, since this suit was commenced, spent considerable time searching out evidence, and conversing with the witnesses to be used on the part of the defence; and if so, how much time have you so spent?

Ans. I have not searched for any evidence in this case; I have occasionally talked with the witnesses; all with which I have talked are old friends and fellow-craftsmen. This time I came down from Racine to attend principally to a suit of my own.

212 Respondents admit that Captain John W. Brown, this witness, of Racine, has rendered them advice and assistance in this case from its commencement to the present time, and has been present at most of the testimony taken in this suit.

JOHN W. BROWN.

Subscribed Feb'y 16th, 1861.

J. T. MOULTON, *U. S. Com'r.*

Endorsed: Filed March 25th, 1861.

WM. H. BRADLEY, *Clerk.*

213 *Agreement.*

The agreement in said entitled cause, and also the affidavit of W. H. Arthur, are in the words and figures following, to wit:

U. S. district court, N. dist. Ill.

ROBERT STEWART *vs.* PROPELLER OTTAWA. } In admiralty.

It is admitted between the parties to the above-entitled cause, that L. Hickey, captain of the propeller Lady Franklin, and Wm. Lacey, captain of the propeller Kenosha, will testify that the pilot-house of propellers on the lake is as good a place as any on the propeller for the station of a look-out at night; that it is not the custom, nor never has been, with propellers on the lakes, to carry an extra man as look-out, but that the captain and mate are special look-outs in their respective watches; this stipulation is to have the same force and effect in evidence as though the two above-named captains had given their testimony in this cause to the facts herein stated.

214 L. PROUDFOOT, JR.,
Proctor for Libellant.
WALKER, VAN ARMAN & DEXTER,
Proctors for Respondents.

Aff't of W. H. Arthur.

Captain W. H. Arthur, being sworn, deposes and says, that in the fall of 1860 he was mate of the propeller Iowa, and on her passage up, off Presque Isle, we saw a small boat approaching. We stopped and picked up the said boat's crew. We found, on inquiry, that it was the crew of the schooner Caledonia, which had collided with the propeller Ottawa. The captain of the Caledonia came forward and requested of Captain Jones for a passage of himself and crew to Chicago, as everything went down with the schooner. Captain Jones granted his request. I asked the captain of the said schooner how he came to get lost, and he said he collided with a large propeller about the size of the Iowa. I asked him if the propeller showed any lights, and he said that we saw lights about half an hour before we collided. I asked him what lights he saw, and
215 he replied a red and white light. I told the said captain that the propeller showed her right lights, and was not to blame. I do not recollect the answer he made to it. I asked him how the propeller struck the vessel.

Said capt. replied that the propeller did not strike the vessel, but the vessel struck the propeller; the bluff of her larboard bow struck the larboard quarter of the propeller. I asked him how the wind was. His answer was, off land, and the vessel steered very bad. We had several conversations in relation to the matter.

W. H. ARTHUR.

Subscribed and sworn to this 19th day of Feb'y, 1861.

WARREN SAMPSON,
Justice of the Peace.

District court of the United States for the northern district of Illinois.

ROBERT STEWART
vs.
THE PROPELLER OTTAWA. } In admiralty.

It is stipulated between the parties to said suit that the within affidavit may be read in evidence in said suit.

L. PROUDFOOT, JR.
Proctor for Libellant.

216 WALKER, VAN ARMAN & DEXTER,
Proctors for Resp't.

Record entry.

On this day, to wit, the twenty-sixth day of March, in the March term, A. D. 1861, of said district court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT STEWART
vs.
PROPELLER OTTAWA. } Libel.

Now come the parties by their proctors, and thereupon this cause is set down for hearing on the libel, answer, and proof on file; and the court, after hearing the proofs and part of the argument of advocates, the hour of adjournment having arrived, the further hearing is postponed until to-morrow morning.

Record entry.

217 On the next day, to wit, the twenty-seventh day of March, in the year and in the term last aforesaid of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT STEWART
vs.
PROPELLER OTTAWA. } Libel.

Now come the parties by their proctors, and after hearing the conclusion of the arguments, the court take said cause under advisement.

Dep'n of R. A. Jones.

On this day, to wit, the twenty-ninth day of March, A. D. 1861, came said respondent by his proctors, and filed in said clerk's office the deposition of Robert A. Jones in said entitled cause, which said depositions is in the words and figures following, to wit:

District court of the United States for the northern district of Illinois.

ROBERT STEWART
vs.
PROPELLER OTTAWA. } In admiralty.

218 UNITED STATES, *Northern District of Illinois, ss:*

Be it remembered, that on the first day of November, A. D. 1860, personally appeared at the office of Smith & Proudfoot, in the city of Chicago, before me, John A. Bross, a commissioner appointed by the circuit court of the United States in and for the northern district of Illinois, in the seventh circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, &c., Robert A. Jones, to testify and the truth to say on the part and behalf of the respondent in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the northern district of Illinois, wherein Robert Stewart is the libellant, and the propeller Ottawa is the respondent. And the said witness being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

219 Question 1. What is your age, occupation, and place of residence?

Answer. I am thirty-seven years of age; I am master of a propeller; I reside at Buffalo.

Question 2. What was your employment on the 16th day of September last, and where were you at that time?

Answer. I was master of the propeller Iowa at that time, but cannot state where I was on that day.

Question 3d. Did you in the month of September, 1860, as master of the propeller Iowa, make a voyage from Buffalo to Chicago? and if so, state at about what time in the month you made such voyage or voyages.

Answer. I made two voyages in the month of September, 1860. On the last voyage I left Buffalo on the fourteenth; that was the last voyage in September.

Question 4th. Do you know Captain Bangs, of the schooner Caledonia?

Answer. I knew a man who came aboard of my propeller, the Iowa, who said he was the captain of the Caledonia. I do not know his name. He came aboard about noon, I think the 18th of September, off Presque Isle harbor, on Lake Huron. I was bound for Chicago.

220 Question 5th. Did you at that time, or before he left the propeller Iowa, have any conversation with him in regard to a collision of the schooner Caledonia with a propeller in Lake Huron? and if so, state what he said in regard thereto.

Answer. I did have conversation with him; he told me he had a collision with some unknown propeller. I asked him how it occurred, and he told me he was laying his course down along the land, with the wind abaft the beam, between Middle island and Thunder Bay island; he said he saw Thunder Bay light and a propeller light; he said he saw the propeller's bright light and red light about two points on the port bow, about half an hour before the collision; he said he did not think there was any danger, any trouble about a collision at all; he went forward to look to see if he could see the propeller, and the propeller blowed her whistle, and the first thing he knew, he said, he was right into her; he said he struck the propeller about abreast of the smoke-pipe. I asked him how he could run into a propeller when he saw nothing but a bright light and a red light; I also asked him if he saw her green light,

221 and he said not; I also asked him if he altered his course; he said he did not give any orders to alter her course; that his vessel steered wild, and she might have yawed off with him; nothing more of any importance was said.

Question 6. Where did the captain of the Caledonia leave your propeller?
Answer. In Milwaukie.
Question 7. How long have you sailed?
Answer. About twenty-two years.

R. A. JONES.

Sworn and subscribed to this first day of Nov'r, 1860, before me.
JOHN A. BROSS, *U. S. Com'r.*

222 Memorandum.—The direct examination here closed, Mr. Proudfoot, of counsel for libellant, declining to cross-examine at present, but reserving the right to cross-examine the witness on his return from Buffalo; and Mr. Dexter, counsel for claimant, stipulating for the right to use the direct examination of the witness, if counsel for the defendant does not cross-examine as above.
JOHN A. BROSS, *U. S. Com'r.*

Dist. court U. S., nor. dist. Ills.

ROBERT STEWART *vs.* PROPELLER OTTOWA. } In admiralty.

UNITED STATES, *Northern District of Illinois, ss:*

I, John A. Bross, a commissioner appointed by the circuit court of the United States in and for the northern district of Illinois, in the seventh circuit, under and by virtue of the acts of Congress, do hereby certify that the reason for taking the foregoing deposition, and the fact is, that the same were then by consent of parties, Mr. Proudfoot appearing for libellant, and Mr. Dexter for claimant. I further certify that no notification of the time and place of
223 taking said deposition was made out and served, which is hereto annexed.

I further certify that on the first day of November, A. D. 1860, I was attended by Mr. Proudfoot, of counsel for the said libellant; Mr. Dexter, for said respondent; and by the witness, who was of sound mind and lawful age; and the witness having been by me carefully examined and cautioned, and sworn to testify the whole truth, the deposition was by me reduced to writing in the presence of the witness, who subscribed the same in my presence; and I have retained the said deposition in my possession for the purpose of transmitting the same by my own hand to the court for which the same was taken.

I further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the said cause.

In testimony whereof, I have subscribed my name and affixed my seal, this first day of November, A. D. 1860.

[SEAL.]

———— ————,
United States Commissioner, Northern District of Illinois.

224 Endorsed: Filed March 29th, 1861.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the twenty-seventh day of February, A. D. 1862, in the December term, A. D. 1861, of said district court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

Record entry.

ROBERT STEWART *vs.* PROPELLER OTTAWA. } Libel.

The court, having fully considered, and being now sufficiently advised upon the pleadings and testimony heretofore submitted in this cause, finds the pro-

peller Ottawa was in fault, and liable for the damage sustained by the collision alleged in the libel; and it appearing to the satisfaction of the court, by petitions and proofs heretofore filed, that since the commencement of this suit the Pacific Mutual Insurance Company, of New York, have paid a policy on the cargo lost by the collision of the schooner Caledonia to the amount of six
225 thousand five hundred dollars; and that the Arctic Insurance Company, of New York, have paid a policy on the said schooner lost by the collision to the amount of two thousand and sixty-seven dollars; it is ordered, with the consent of the said Robert Stewart, the libellant, that the said insurance companies be made parties to the record, as jointly interested with him as co-libellants, in the damages to be recovered; to which order of the court, in allowing them to be made parties, the respondent by his proctors objects.

And the court finds the damages sustained in consequence of the loss of the schooner Caledonia to be thirty-five hundred dollars, and the damage sustained in consequence of the loss of her cargo to be six thousand six hundred and forty-six dollars and eight cents, making in all the sum of ten thousand one hundred and forty-six dollars and eight cents.

It is thereupon considered and adjudged by the court, that the defendant pay to the libellants in this action the said sum of ten thousand one hundred and forty-six dollars and eight cents, the damages aforesaid, together with the costs and charges to be taxed; and on motion of L. Proudfoot, jr., esq.,
226 proctor for said libellants, it is considered and adjudged by the court that a summary judgment be, and the same is accordingly hereby, entered against Martin Ryerson, the principal, and Robert H. Foss and T. M. Avery, as sureties, for the sum of twenty-one thousand dollars, that being the amount of the bond and stipulation given to the marshal upon the release of said propeller, and that execution issue therefor, to be discharged and satisfied upon the marshal making thereon the decree for damages, interest, and the costs.

And it is further ordered that the said sum hereby decreed to be paid, when collected, be paid into court by the marshal, subject to be distributed among the said co-libellants, according to the equities of the case and the rights of the parties.

Notice of appeal.

227 On this day, to wit, the third day of March, A. D. 1862, came said respondent by his proctors, and filed in said clerk's office his notice of appeal in said entitled cause, which said notice of appeal is in the words and figures following, to wit:

District court of the United States for the northern district of Illinois.

ROBERT STEWART *vs.* PROPELLER OTTAWA. } In admiralty.

CHICAGO, *March 1st*, 1862

SIR: The respondent intends to appeal from the final decree of the court in this cause.

WALKER, VAN ARMAN & DEXTER,
Proctors for Respondents.

To L. PROUDFOOT, Esq., Proctor for Libellant.

CHICAGO, *March 3d* 1862.

Accepted service of a copy of the above notice.

L. PROUDFOOT, JR.
Proctor for Libellant.

Endorsed: Filed March 3d, 1862.

WM. H. BRADLEY, *Clk.*

Appeal.

228 On this day, to wit, the sixth day of March, A. D. 1862, came said respondent by his proctors, and filed in said clerk's office his appeal, and also his stipulation in said entitled cause, which said appeal and said stipulation are in the words and figures following, to wit:

Circuit court of the United States for the northern district of Illinois.

ROBERT STEWART
vs.
PROPELLER OTTAWA. } In admiralty.

To the honorable the circuit court of the United States for the northern district of Illinois:

The appeal of the above named propeller Ottawa, and her owner, appellant, respectfully showeth, that on or about the second day of October, A. D. 1860, the above named libellant, Robert Stewart, exhibited his libel against the appellant in the district court of the northern district of Illinois, claiming over fifty dollars, and praying, among other things, for the reasons set forth in said libel, that this appellant may be condemned to pay the demands of said libel-
229 lant and costs in said libel mentioned, which libel was afterwards amended on the fifteenth day of December, 1860; that process issued out o said court having been served on this appellant, he did, on or about the twenty-first day of November, A. D. 1860, file his answer to said libel in the said district court, praying that the said libel be dismissed with costs in that behalf, as by reference to said libel and said answers may more fully appear.

That the said cause came on to be heard before the honorable Thomas Drummond or about the twenty-sixth and twenty-seventh day of March, A. D. 1861, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties, and the said judge having advised thereon, on the twenty-eighth day of February, A. D. 1862, whereby it was, among other things, ordered and decreed that the libellant in said cause recover against this appellant the sum of $10,146 $\frac{8}{100}$, as by reference to the said decree may more fully appear, and this appellant is advised and insists that the said decree is erroneous for the following, among other reasons:

First. That by said decree, freight for carrying the cargo of the schooner
230 Caledonia was allowed in addition to the price and value of the cargo at the port of destination.

2d. That certain portions of said decree were rendered in favor of the insurance companies; that said insurance companies were not original or intervening libellants in the cause, and ought not to have been subrogated to any extent.

3d. That by said decree damages were decreed to the libellants, and dismissal of the libel refused.

And this appellant, for these and other reasons, appeals from the whole of said decree in favor of Robert Stuart, the Pacific Mutual Insurance Company, and the Arctic Insurance Company, to the next circuit court to be held in said district, and on the said appeal he intends to make new allegations in the circuit court, and introduce new and further proofs, and prays that the records and proceedings may be returned to the said circuit court, and that the said decree may be reversed, and such other decree thereupon made as to the said circuit court shall seem just, and that the said appellee be condemned to pay this appellant his costs and damages in the premises.

WALKER, VAN ARMEN & DEXTER,
Proctors for Respondents.

231 A. W. ARRINGTON, *Counsel.*

I acknowledge service of a copy of the above appeal.

L. PROUDFOOT, JR., *Proctor for Libellant.*

Chicago, March 6th, 1862.

Endorsed: Filed March 6th, 1862. WM. H. BRADLEY, *Cl'k.*

Stipulation.

Circuit court of the United States for the northern district of Illinois.—In admiralty.

Whereas an appeal has been taken to this court from the district court of the United States, in the northern district of Illinois, in a certain cause wherein Robert Stuart was libellant against the propeller Ottawa, her tackle, &c., Martin Ryerson, claimant, by the said claimant, and the said appellant has been ordered to give security by the stipulation of himself and competent sureties in the sum of twenty thousand two hundred and ninety-two dollars and sixteen cents, for the payment of all damages and costs on the appeal in this court, and in the Supreme Court:

Now, therefore, the stipulators undersigned hereby stipulate in the
232 said sum of twenty thousand two hundred and ninety-two dollars and sixteen cents, to pay all damages and costs on the appeal in this court and in the Supreme Court, in case such appeal shall intervene.

Witness our hands this sixth day of March, A. D. 1862.

MARTIN RYERSON.
T. NEWELL.
T. M. AVERY.
ROBERT H. FOSS.

Approved.

THOMAS DRUMMOND.

Endorsed: Filed March 6th, 1862.

WM. H. BRADLEY, *Cl'k.*

233 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a full, true and complete record of the proceedings had in the cause, wherein Robert Stewart was libellant, and propeller Ottawa, respondent, as the same appears from the records of said court in said cause now remaining in my custody.

[L. S.] In testimony whereof I have hereunto set my hand and affixed the seal of said court at office in Chicago, this 26th day of March, A. D. 1862, and of our independence the eighty-sixth year.

WM. H. BRADLEY, *Cl'k.*

Endorsed: Filed March 26, '62.

WM. H. BRADLEY, *Cl'k.*

234 Be it remembered, that after filing the record of the district court in said cause in said circuit court, the following proceedings were had therein, and also additional proofs taken and filed:

The following testimony was filed by the libellant in said circuit court on the 25th day of June, A. D. 1863:

Circuit court of the U. S.

ROBERT STEWART, *vs.* PROPELLER OTTAWA. } In admiralty.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Be it remembered, that on the days mentioned at the beginning of each de-

position, I, Azariah T. Galt, a notary public, duly commissioned and qualified, for the city of Chicago, in said district, acting under and by virtue of the act of Congress entitled an "Act supplementary to an act to authorize notaries public to take and certify oaths, affirmations, and acknowledgments in certain cases," did cause Charles A. Stewart, James Williams, Peter Mowat, and W. E. Parsons, personally to appear before me at my office, in the city of Chicago, in said district, to testify on the part of the libellant in a certain cause depending in the circuit court of the United States for the northern district of Illinois, at Chicago, wherein Robert Stewart is libellant, and the propeller Ottawa is respondent.

And the said Charles A. Stewart was by me, on the nineteenth day of May, A. D. 1862, first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid. I carefully examined the said Charles A. Stewart, and he did thereupon depose and say as follows, to wit:

1st interrogatory. What is your name, age, occupation, and place of residence?

Answer. My name is Charles A. Stewart; my age is twenty-five; my occupation is book-keeper for Robert Stewart; I live in Chicago.

2d int. Were you acquainted with the schooner Caledonia, which schooner was lost in the fall of 1860, by reason of a collision on Lake Huron with the propeller Ottawa?

Answer. Yes, sir.

3d int. Are you acquainted with one Walter Ellis, who was at that time engaged as a seaman on board of said Caledonia?

Answer. Yes, sir.

236 4th int. State if any conversations took place between said Walter Ellis and yourself on the 22d day of September after said collision, and after the protest had been signed by said Ellis in reference to any of the circumstances attending said collision; and if any, state when and where said conversations occurred, and what was said during said conversations.

(Objected to by Mr. Dexter because as the question is asked for the purpose of impeaching Walter Ellis it is not admissible; because the conversation between this witness and Walter Ellis, about which Ellis in his examination was inquired about, is not material evidence in the case; and it is further objected to for the reason that the testimony called for is hearsay.)

Answer. There was a conversation about being paid for his clothes in the office of Robert Stewart, on the corner of West Water and Madison streets, for his clothes that he had lost on the Caledonia; I don't remember the date; it was the latter part of September; it was the same day he signed the protest, and after he signed it; he said he ought to be paid for his clothes, and if he could not get pay out of the old man (meaning Robert Stewart) he would get it out of some one else; he said nothing more that I recollect; he talked about his clothes, that was what he talked about principally; his conversation was between Walter Ellis and myself.

5th int. Did he demand pay for the loss of his clothes from you, or from any other person? And if so, state who.

(Objected to by Mr. Dexter as leading, particularly after the witness has stated that he recollects nothing more.)

237 Answer. He demanded pay of Mr. Robert Stewart before he signed the protest.

6th int. Did he mention any sum as being the value of his clothes that he lost in his conversation with you?

(Objected to by Mr. Dexter for the reasons before given to int. 4th, and for the further reason that no proper foundation has been laid for the question.)

Answer. Not on this same day.

7th int. Did he on any other occasion? If yea, state when and where, what he said.

(Objected to by Mr. Dexter for the reason that as this is intended as impeaching testimony, there was no proper foundation laid for the question in the examination of Walter Ellis, and for the further reason that it calls for immaterial matter and hearsay.)

Answer. The next day after the conversation before alluded to, in the same office, he said if he was paid fifty dollars he would be satisfied.

Cross-examination by Mr. Dexter

1st x int. Are you not a son of Robert Stewart, the libellant in this case?

Answer. Yes, sir, I am.

238 2d x int. On the day when the protest was signed, and on which you say you conversed with Walter Ellis at your father's office, how far from where you and Ellis stood, at the time of the conversation in the office, did your father stand?

(Objected to because it is assuming that his father was present.)

Answer. My father was not there at all; he was not in the office.

3d x int. Who was present in the office at that time besides yourself and Ellis?

Answer. No one.

4th x int. Did you and Ellis go to the office together?

Answer. No, sir.

5th x int. Who did accompany Ellis to your office?

Answer. I was in the office at the time, and did not notice any one.

6th x int. Where was your father at this time?

Answer. I think he was cross in town.

7th x int. Were you present at Atwater's office just before the protest was signed?

239 Answer. No, sir.

8th x int. How, then, did you learn that Ellis had demanded payment of your father for his clothes just before he signed the protest?

Answer. He done it before they went down to Atwater's office; I mean by "they," the captain and one of the men.

9th x int. Did your father go with them?

Answer. I believe not.

10th x int. He staid at the office, then, did he?

Answer. No, sir, I don't think he staid there all the time; he was there off and on.

CHARLES A. STEWART.

240 And the said James Williams was by me, on the twenty-sixth day of May, A. D. 1862, first duly cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid. I carefully examined the said James Williams, and he did thereupon depose and say as follows, to wit:

1st interrogatory. What is your name, age, occupation, and place of residence?

Answer. My name is James Williams; my age is twenty-three; I do a little of everything; mostly follow the lakes; I live in Chicago.

2d int. Do you know the parties to this suit, and how long have you known them?

241 Answer. I know the parties by sight. I have known Mr. Stewart only some three or four days. I have known the propeller Ottawa some six years.

3d int. Were you ever employed in any capacity on board the propeller Ottawa; and if so, state when, for how long a time, and in what capacity.

Answer. I was employed on board the propeller Ottawa. I commenced on

the latter part of May or first of June, 1860, and was on her until the accident—the collision with the Caledonia. I was on her as wheelsman.

4th int. Did you occupy the position of wheelsman from the time you firs shipped up till the time you left? If you did not, state what positions you di occupy.

Answer. I did not ship as wheelsman; I shipped as deck hand; I was deck hand about six weeks. Some of the boys left at Muskegum and I was going to leave also, about some meat, and the captain told me I had better stay, and when we got back to Chicago he probably would do better for me. He then told me to go as wheelsman, and I occupied that position to the day of the collision, or to the time she arrived at Chicago, after collision, and then I left.

5th int. Why did you leave?

(Objected to by proctors for respondents.)

242 Answer. I did not feel very well, and one of my partners left; my partner went by the name of "Buffalo Bill;" his name is John something; we had been together a long time.

6th int. Did you leave without any quarrel taking place between yourself and the captain, or the proprietors of the boat?

(Objected by proctors for respondent because it is wrong in form and leading; and counsel for the respondent objects to its being put in that form; and the proctor for libellant replies that he will put them in what form he pleases.)

Answer. There were no quarrels, and nothing out of the way.

7th int. Were you on board of the Ottawa on the evening of the 16th day of September, 1860, at the time of the collision with the schooner Caledonia? And if so, state what you were doing, and state the circumstances of the collision as fully as you can recollect.

Answer. I was on board of the Ottawa on the evening of the 16th of September, 1860, at the time of the collision with the Caledonia; my partner relieved me from the wheel at six o'clock—I mean, by my partner, Richard Buasu; my watch was not coming on till eight o'clock; I went into our room and sat down, and commenced reading a song-book; I kept sitting there, and the clothes kept falling down off of the nails, and picked them up and threw them into the bunks; then there was a deck hand came in and told me the man, Richard Bruseau, at the wheel wanted me; I went out of the room and

243 looked to see if the light was lit; it was nearly over the door, about three or four feet back of our room; I saw the light was not lit, and I went around and I looked on top of the pilot-house to see if the bright light was lit; I did not go up, but looked up as I went around; I could not see anything of the bright light; it was not burning; as I went around I looked to see if the light was burning on the starboard side, but saw nothing there; it was about over the captain's room; I then opened the door, and saw the bright light sitting in the pilot-house; it was lit, but the minute I opened the door the wind blew it out; I went in and took a hold of the wheel along with this Richard Bruseau; he complained that she was hard to steer; I had not been at the wheel more than three minutes when the collision occurred; I did not know what it meant; I thought the engines had bursted; this man that was at the wheel ran out to see what was the matter; I staid at the wheel, and the engines was stopped, and we lay there drifting; the captain and the mate and some deck hands came out forward and were working to try and keep the lights lit, and I heard the captain after the collision on top of the pilot-house; he might have been there before for all I know of; the mate he opened the pilot-house door and commenced to blow the whistle, and told me to look out for myself; he was about right too; he kept blowing a while, and shortly after this, about a half an hour as near as I can come to it, a big barque called to us about our having no lights, and came near running into us. That is about all I know.

8th int. About what time was it that you went to the pilot-house to

244 assist Bruseau?

Answer. As near as I can come to it, it was about half past seven; it may have been a few minutes earlier or later.

9th int. How long had Bruseau been acting as wheelsman on the Ottawa before the collision, and what position did he occupy on board before he took the position of wheelsman?

Answer. It was not very long; between three weeks and a month; not over a month; he was a deck hand before he took the wheel.

10th int. Who was at the pilot-house when you went there on the evening of the collision to assist Bruseau, up to the moment of the collision?

Ans. Bruseau was there only; I could see no one else; the man that came to call me went aft; there might have been others on top of the cabin; I saw no one.

11th int. At the time you took the wheel to assist Bruseau, and up to the moment of the collision, were either the red, green, or bright signal lights burning in their proper places? If not, state where they were, if you know.

(Objected to by proctors for respondent as leading.)

245 Answer. They were not burning at their proper places, or at any other place, that I know of; I saw the bright light burning in the pilot-house when I opened the door, and then it went out.

12th int. State, if you know, how these several lights had been burning during the evening after they were first lighted, up to the time you went to the pilot-house.

Ans. I don't know whether they were burning during the evening at all or not; I did not see them burning, and did not see them lit.

13th int. Were you on deck or in any position from which you could see the lights during the evening and before the collision; and if so, were they burning or not?

Answer. I was on deck so that I could see the whole of them if they were up there; I did not see them burning; they were not all up there in their places.

14th int. Did you, during the evening at any time before the collision, see either of the said lamps out of their proper places on deck; and if so, state where you saw them, and why they had been removed from their proper places?

(Objected to by proctors for respondent because leading in form.)

Answer. I seen the bright light before the collision, when I went to
246 take the wheel, in the pilot-house; where the rest of them were I do not know; I know they were not lit.

15th int. Why were not the lamps burning in their proper places?

Answer. Because they would not burn where they were; they would not keep lit.

16th int. Why not?

Answer. I suppose they were of no account; I don't know; I guess that was what the matter was.

17th int. How was the Ottawa headed at the time you went to the pilot-house to assist Bruseau; and was any course given you by Bruseau as the course you were to steer; and what course did you steer up to the moment of the collision?

Answer. When I came in I did not look to see what course he was steering; he did not give me any course; after the collision we were running around to keep clear of the vessels; I don't know what course I steered up to the moment of the collision; they had no course; they gave me no course.

18th int. At what rate of speed was the Ottawa running just before and at the moment of the collision?

247 Answer. I am not much judge of how fast they run; but I judge she was going about five or six knots an hour, as near as I could judge.

19th int. Was any notice given by either of the pilots to slow the speed of the Ottawa before the collision?

(Objected to by proctors for respondent as being improper in form.)

Answer. I had no notice; there was none given that I know of.

20th int. Are not directions to the engineers given by means of bells, or otherwise, the wires to which extend from the engine-room to the wheel-house?

(Objected to by proctors for respondent.)

Answer. Of course there are wires there; there are wires there from the pilot-house to the engine-room; directions to the engineer are given by means of bells.

21st int. Were any directions given to the engineer by means of such bells to slow or stop the engine before the collision?

Answer. No, sir; she stopped herself at the time of the collision.

22d int. What caused her to stop?

Answer. The jib-boom of the vessel running into her; the cap of the jib-boom struck the engineer on the shin.

23d. int. Was the engine of the Ottawa damaged by the collision which
248 caused the stoppage? If so, state how.

Answer. I don't know that she was damaged much; she was unhooked; she lay in the lake awhile drifting before we could do much with her.

24th int. Did any cabin passengers come up from Buffalo, or any other point, in the Ottawa, on this trip? If so, state who so came up.

Answer. There was a lady passenger came up; two gentlemen from Detroit came up with us.

25th int. Who, if any one, accompanied the lady passenger you speak of?

Answer. I don't know; I never saw any one keeping company with her; I saw the captain and others talking to her; I hardly know what you mean by keeping company, any more than talking with persons; that is all I seen; I saw them sitting on the lounge together, talking; well, the captain.

26th int. Who did you see sitting on the lounge talking together?

(Objected to as being slightly leading.)

Answer. The captain and lady passenger.

27th int. State if you know the name of the lady passenger; and did
249 she come on board alone, or in company with other passengers; and did she come through to Chicago?

Answer. I do not know the lady passenger's name; she came on board alone; I could not say whether she came through to Chicago or not.

28th int. Was she on board on the evening of the collision?

Answer. Yes, sir.

29th int. Do you know Mr. Rae, one of the counsel for the respondents in this case, and have you met him before meeting him at this examination? If so, state when, where, and under what circumstances.

Answer. I know him by sight; I met him at the house where I board, Mr. McRae's; he left word there that he wanted to see me between eight and nine o'clock last night; I staid there till they came over, two of them together; Mr. McRae gave me an introduction to Mr. Rae, and Mr. Rae asked me to take a walk with him.

30th int. Do you know Mr. Dexter, one of the counsel for the respondents in this case, and have you met him before meeting him at this examination? If so, state when, where, and under what circumstances.

Answer. I know him by sight; I met him last night; I left him and
250 Mr. Rae about eleven o'clock last night where I board, at Mulligan's Exchange.

31st int. State what occurred, and what conversations took place between you and Messrs. Dexter and Rae, or either of them, during the meeting you speak of as having occurred last evening; state fully all the facts and circumstances.

(Objected to by Mr. Van Arman, one of the proctors for respondents, as irrelevant.)

Answer. They came to the boarding house to see me; Mr. Dexter did not

come; Mr. Rae and another gentleman; Mr. Rae asked me to take a walk; he asked me if I was on the Ottawa at the time of the collision; I told him yes; he asked me if I knew anything about the lights; I told him I knew something about them; I told him there were only two lights on board of the propeller burning at the time, and that was the binnacle light in the pilot-house, and the engineer's lamp down in the engine-room; he commenced talking to me about being a witness on this side, the vessel's side, the Caledonia; he said I ought not to turn against my own boat in that way; I said I had not turned against either party; that I did not think more of one side than I did of the other; finally me and Mr. Rae went up to a house on Rush street; he told me his brother lived there; he said he had no change with him, and he wanted to get some money; he talked about buying cherry cobblers; the gentleman he was looking for was not in; he rang the bell, and the lady said he had not come home yet; we then walked up as far as Chicago avenue and turned back,
251 and we stopped at the same house again and he had not got home; I then told him that I had a little change, and he should go down to the Lake House saloon and get a drink; and when we got there he would not go in, but sat down on the steps outside; we were waiting for Mr. Dexter to come along; we were there about ten minutes. and Mr. Dexter came along and stopped; he told Mr. Dexter that I knew something about this scrape, and they stepped aside and talked it over awhile; we then walked up again pretty nigh the house again on Rush street; pretty nigh five blocks from the river on the east side of the street; and then they came down to the house where I board with me; and Mr. Dexter called for the cigars and threw down fifty cents, and said he would take it out in the morning; the lady was pretty slow about getting the change; Mr. Dexter told me he would be down at seven o'clock this morning to see me where I board; he told me last night to be on board of the Ottawa at ten o'clock this morning; he asked me where he could see me; I told him I would be at Mr. Ryerson's office or on the propeller Ottawa; they wanted to know last night how much it would cost to have me leave town, but they would sooner have me stay; Mr. Dexter came to my boarding-house this morning at seven o'clock, and told me it was a rainy morning, and the banks would not open till ten o'clock, and that I should be on board of the Ottawa at eleven o'clock; I went over there at eleven o'clock and found Mr. Rae on board of the Ottawa; he wanted to see where the lights were situated, and I showed him; Mr. Dexter had not got there yet; we went in the cabin and sat down; he sent the darkey out to the dock to tell Mr. Dexter to come on board; Mr. Dex-
252 ter came on board a few minutes after they sent the nigger out; Mr. Dexter then handed over a roll of bills which he held in his hand to Mr. Rae, and then Mr. Rae asked me what it would cost or be worth for me to leave town; I said three hundred dollars; both of them have asked me, but not at the same time; one of them, I believe Mr. Rae, said he thought that was pretty steep; that Ryerson was a poor man; this McRae, that was with me, said that he thought the three hundred dollars was too steep, and asked me if I could not do with two hundred and fifty dollars; Mr. Dexter asked Mr. McRae to come along with me; they kind of concluded to give me that, but the captain came in and they got to asking the captain about it, and he said it was no such thing, and that he would not give me five cents to leave town; the captain, Mr. Dexter, and Mr. Rae went into the lady's room, and I went off about my business and got my dinner.

32d int. State what your reason was for offering to leave town for three hundred dollars.

(Objected to by Mr. Van Arman as irrelevant.)

Answer. Because Mr. Proudfoot told me to take any money I got in that way, and they could not take it from me; I needed money myself; I had spent a good deal.

33d int. Have you stated, to the best of your recollection, all that passed between you and Mr. Dexter or Mr. Rae, or either of them, at the conversation alluded to? If not, state all you can recollect.

Answer. Well, they asked me what I was getting here as a witness;
254 I told them I was promised one dollar and a half a day for witness' fee;
*Mr. Proudfoot told me they said they paid their witness five to ten dollars a day; that is about all.

34th int. State if you know whether Mr. Rae or Mr. Dexter, on the evening when the conversation took place of which you speak, were aware that you had been retained by the libellant as a witness in this case; if so, state how you know.

Answer. I told them I was a witness over here; and they knew, because three or four persons had been running around inquiring for "Norwegian Jim," and I shifted my boarding-house and went up on Wells street, and staid there a couple of days; this is about all I know about it; some man that had been sent to the house wanted me to go out to the Dutch garden on Sunday.

35th int. Why did you change your boarding-house?

Answer. Well, I did not know what they wanted with me; I was told to keep away, but at the same time I was told if I could get any money, to take all I could get out of them; Mr. Proudfoot told me this.

36th int. Please state exactly the conversation which Mr. Proudfoot had with you on this subject, and what reason he gave in thus advising you.

(Objected to by proctors for respondent.)

Answer. He did not want me to have conversation with them at all;
255 I suppose that is it; God! I don't know everything he told me; Jesus! if I should think of everything that was told me I would have a big head on me.

36th int. Re-read to the witness by direction of Mr. Proudfoot.

Answer. Damned if I know what was the reason.

37th int. Do you understand the question?

Answer. No; I don't know what he wants, what he means.

38th int. What reason, if any, did Mr. Proudfoot give you why you should take any money that might be offered to you by any party representing the propeller Ottawa?

(Objected to by proctors for respondent, and all the questions before on this subject.)

Answer. Well, he said they could not take it away from me; if I got any that I could keep it.

39th int. Did he not warn you against attempts on their part to bribe you?

(Mr. Proudfoot said the witness does not understand the question; the witness then says, Damned if I know what you mean.)

Answer. No.

40th int. Did or not Mr. Proudfoot say that they no doubt would make you offers of money with a view to get you out of the way, as your testimony was important; and if they did, that you should take such offers of money?

256 Answer. Yes, he told me; he told me if I was offered anything to take it.

41st int. State, if you know, what are the proper and necessary signal lights used on board of steamers and propellers, and what positions they should occupy on the boat.

(Objected by proctors for respondent on the ground that the witness has already sworn that he was but a short time a deck hand and a wheelsman, and therefore has had but little experience and is not an expert.)

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*On reading the whole deposition to the witness, he desired to say that Mr. Rae alone said they paid their witnesses five to ten dollars a day.

Answer. There is a red light on the larboard bow, or larboard side rather; and a green light on the starboard side, and a bright light on the pilot-house.

42d int. How long have you followed the sea, and how much of that time has your experience been among steamers?

Answer. It is six years this spring since I first took a hold; the biggest part of that time has been among steamers.

43d int. In your answer to the seventh interrogatory you say as you came out of your room to go to the pilot-house you looked up to see if the light was lit, which was nearly over your door: what light do you mean?

Answer. It was the red light; it was not lit though; it wasn't burning.

257 44th int. You say, in your answer to the thirty-first interrogatory, that you were waiting on the steps of the Lake House Exchange for Mr. Dexter to come along; state how you knew that Mr. Dexter was to be there.

Answer. Well, we—Mr. Rae and I—went up to the house; Mr. Rae said his brother lived there, and walked down; we were going to get something to drink at the Lake House Exchange; Mr. Rae would not go down; I heard Mr. Rae call Mr. Dexter by name, but I did not know that he, Mr. Dexter, was to be there; I thought Mr. Rae's brother was to be there.

Cross-examination by Mr. Van Arman, one of the proctors for respondent.

1st x int. What countryman are you?

Answer. I am a Norwegian.

2d x int. How long have you been in this country?

Answer. A little over nineteen years.

3d x int. What is your age?

Answer. Twenty-three.

258 4th x int. What is your occupation? and if you have followed more than one occupation, state all your occupations, and how long you have followed each.

Answer. I have followed the lakes for about six years; I have worked on the Mississippi some three winters; I have drove teams eight months in the army, and I have worked here in pail factory about two and a half or three years; I have been working on a farm some, off and on.

5th x. int. When and where did you drive team for eight months in the army?

Answer. In Missouri, Arkansas, Mississippi, Tennessee, and Kentucky. I left here the fourteenth of October, last fall.

6th x int. When did you work on the Mississippi river?

6th x int. In whose division, brigade, and regiment of the army were you employed? By whom were you employed? What was your special duty? Under whose control or authority did you work? And by whom, when, and where were you released from your employment?

Answer. I was in General Pope's division; I was driving staff team for Col. Brown and Gen. Steel, that was in Missouri; I was transferred to a different man before we got to St. Louis—Captain Swayne, of the quartermaster's or commissary's department; I drove for Captain Swayne till we got to Commerce, on the Mississippi, then I was transferred to General Palmer, and I staid

259 with him till I quit; I was employed by those men that I was driving for. The first man that hired me was a Mr. Burns, in this town, connected with the fire department; he took me to St. Louis; my special duty was teamster, driving six mules. I worked under the control of the quartermaster; I had two or three quartermasters. General Palmer released me from my employment, fourteen miles back from Hamburg landing, eight miles up the river from Pittsburg landing, on the tenth of May.

7th x int. How were you employed, by enlistment or hiring? And how

were you released, by discharge or expiration of your time of hiring, or otherwise? State the particulars, and state whether you have any written evidence of your discharge.

Answer. I was hired by the month—twenty-five dollars a month; there was no enlistment about it. When I quit, I told them I wanted to go home; that I wanted my time, and they gave it to me. I have no written evidence of discharge, I don't need any.

8th x int. State when, where, and for how long you were employed on the Mississippi river, and by whom you were so employed, and what was your occupation?

Answer. I have been on different boats on the Mississippi river; on different boats running between St. Louis and New Orleans, a year ago last winter; steamboating off and on all the winter. I don't know the
260 name of the man who employed me. I was on a steamboat on the Illinois river, the La Salle. The first one I was on was the Key West, she was in the Pittsburg trade, this was five years ago; and then I was on the Commodore Perry, she was in the same trade on the Mississippi and Ohio rivers, two hundred miles of the Mississippi and twelve hundred of the Ohio; the next was the C. W. Lunbard, on the Missouri river; this was three or four years ago last winter; I did not steamboat any; the next was the Dew Drop, up the Mississippi; I cannot mention the time. I was on the Harmonia, on the Mississippi river, and the Sam Young, on the Illinois river trade, and the Brazil, on the Illinois river, and the Louisville, on the Illinois river, and the Minnehaha, on the Mississippi river. I guess that is all that I ran on down there. I was deck hand and a roust about—a man of all work. I commenced on the Mississippi five years ago last fall, and it is two weeks since I left there. I spent one winter in Chicago since I went down.

9th x int. When, where, how, and for whom were you employed in a pail factory?

Answer. I was employed, by Joseph Stark, as a turner; that was some time ago; it was about eight years since I commenced working for him. I left there and shipped on a brig when I first commenced sailing; I worked for him about two years and a half—for him, off and on; I quit and went a sailing, and then went back again; I believe the firm bursted up. This pail factory was on Market street, between Jackson and Quincey streets.

261 10th x int. You stated in your examination in chief that you were six years following the lakes. What six years were you on the lakes? Upon what vessels? Who were their owners? What was your particular employment in each? State fully.

Answer. I quit last fall; I was on six years, right along, till last fall. The brig A. R. Cobb, Chicago, owned by Captain Henderson; brig A. M. Mitchell, of Milwaukie, Captain Hutchinson; she was owned by Luddington; on the Honest John, of Chicago, Captain Thompson, owned by Charles Mears, on the propeller Charles Mears, Captain Ryerson, owned by Charles Mears; on the propeller Ottawa, Captain Nels Havens. I went back on the Mears again a spell. The Ottawa was laid up for a time at Muskegan. I then went back again on the Ottawa; Ryerson and Morris are the owners. My employment on each of the vessels was before the mast. On the Mears, I was fireman and wheelsman, and I have been deck hand on the Mears.

11th x int. Are you now, or were you ever married? If you are married, how long have you been married, and where are your wife and family?

Answer. I am not now, and never was married.

12th x int. Are you able to read and write, and if either, which?

Answer. I can read; I can manage to write out my name.

262 13th x int. What language or languages can you read?

Answer. American language.

14th x int. Have you any objections to allow us to hear you read? If not, please supply yourself with some book here, and let us here you read.

Answer. The witness here does read aloud from "Brightley's Digest."

15th x int. What was your last employment, and when did it cease?

Answer. Driving six mules, and it ceased the tenth of May.

16th x int. Since the tenth of May where have you been? And state particularly where you have boarded and lodged.

Answer. Three nights I stopped and slept on Hamburg landing, on a pile of sacks; then I lodged on a steamboat coming up to St. Louis, and while at St. Louis I stopped at the General Taylor House; when I came to Chicago I stopped with Mr. McRae, on Kinzie st., next door to the Waverly House, except two nights, when I stopped on Wells street, opposite the Colby House, with a Dutchman named Myer.

17th x int. Since you arrived in Chicago, have you during the whole of the time, or any portion of the time, concealed yourself, or employed any means to conceal your person?

263 Answer. Yes; I concealed myself to keep away from these fellows running over to the house. That is what I went upon Wells street for.

18th x int. When did you commence to practice such concealment, and what were the means you used to conceal yourself? State if you did so from your own accord, or whether you were advised to do so by any one, and if by any person——

(Withdrawn for the present.)

18th x int. Where did you first stop in town, on your arrival here?

Answer. I stopped at the Fort Wayne House, on Van Buren street, near the Rock Island depot. I stopped there a few minutes—about five minutes.

19th x int. Where did you first go to live on your arrival in Chicago.

Answer. Mr. McRae's, next door to the Waverly House.

20th x int. How long did you stay there, and where did you go next?

Answer. I am there yet.

21st x int. You stated that you went up on Wells street to prevent these fellows from coming after you. What fellows do you mean? Give their names. And when did you first go up to Wells street, and to whose house, and how long did you remain?

264 Answer. I mean the man that was in this morning; a low-set man with whiskers McRae admits called this morning; Mr. Stevens and a big tall man they told me came after me—Mrs. McRae told me—and Mr. Dexter and Mr. Rae they came on Sunday evening. I went there, to Wells street, on Friday evening, and staid in the house two nights—to Mr. Meyer's house; I staid there on and off; I had my board paid in both houses; I paid three days' board on Wells street.

22d x int. Did you see any persons who came there, and to avoid whom you say you left Kinzie street, or do you only know they called from information? If from information only, state the source of your information.

Answer. I did not see them, but I knew who they were, and what they wanted; a boarder in the house whom I know told me; he wanted to talk with them, and did talk with the first man; the name of the boarder was Chas. Wadsworth; the landlady told me they were there; I had not left the house at this time.

23d x int. When did the landlady and Wadsworth tell you that these persons had been there, and repeat the precise language of the landlady and Wadsworth when they told you, and what time they told you?

Answer. They told me at the dinner table about the first one being there; it was on Friday, between twelve and one o'clock, of last week. Wads-

265 worth told me there was a fellow there inquiring for "Norwegian Jim,"

and wanted to know my other name, and they did not know what it was. Wadsworth told me, and the landlady, both, that it was a clerk of one of the lawyers in this suit. I walked around town and came back, and they then told me that there had been another man to see me, a low-set man. I told them I would not let them see me until my trial came on, and that I would move up on Wells street till they got tired of coming.

24th x int. You have stated you knew what they wanted of you. What did you know they wanted of you, and how did you know what they wanted of you?

Answer. Wadsworth told me; I suppose they wanted to find out something what I know about the propeller.

25th x int. You say that Wadsworth told you what they wanted with you. Did Wadsworth tell you any more than what you have already said? And if he did tell you anything in addition to what you have already stated, state fully what he said.

Answer. He told me it was some of those lawyers or some of their clerks that wanted to see me.

26th x int. You say Wadsworth said it was some of those lawyers. What lawyers did Wadsworth tell you it was?

266 Answer. He did not mention no particular ones.

27th x int. If Mr. Wadsworth did not tell you what particular lawyers they were, and you did not see them, then how did you know what lawyers were after you?

Answer. Because some of your spots followed us from the office here to where we lived.

28th x int. What do you mean by "spots," and what office did they follow you from; when and where did they follow you to? and state your means of knowledge.

Answer. Men they have got to find out where we live; Wadsworth was with me at the time; I mean this office; I believe it was on last Thursday; they followed us to where we boarded, on Kinzie street; we seen them at the office and on Clark Street bridge, opposite to us, and where we turned he turned.

29th x int. Describe the person that thus followed you, and if more than one, the persons.

Answer. He was a middling-size man; pretty much such a looking man as Stevens; I saw him on the bridge, and I saw him outside of the Waverly House; he stopped where we stopped; I did not take particular notice of him.

30th x int. Have you stated now all the reasons why you thought
267 it was the lawyers or their clerks that wanted to see you at McRae's? If you have not, state all the reasons you have for so supposing; state fully now.

Answer. There was one of them there on Sunday morning—Stevens it was—and Mr. Wadsworth told me that it was the same man that was there before.

31st x int. Have you stated all the reasons that you then had, at the time you left McRae's to go to Wells street, for thinking that it was the defendant's lawyers or their clerks that were after you? If not, state any additional reasons for thinking so you then had.

Answer. Mr. Wadsworth was sure it was one of them; that is all the reason I had for it.

32d x int. Were you anxious to avoid seeing the lawyers of the defendants or their clerks?

Answer. Well, know, I was not very anxious, but Mr. Proudfoot told me to have as little to say with them as I could; I did not care whether I seen them or not.

33d x int. (32d x int. repeated by Mr. Van Arman for a more explicit answer.)

Answer. I did not care whether I saw them or not.

268 34th x int. If you did not care whether you saw them or not, why did you go away to avoid them?

Answer. Mr. Proudfoot told me to have as little to say to them as I could, and therefore I thought it was best to shift my boarding-house.

35th x int. Do you mean that at the time you went away to avoid them you would have just as soon have seen them as not, or that you would just as soon have seen them as not, if Mr. Proudfoot had not told you to keep clear of them?

Answer. Well, I would just as leave have seen them as not at the time I went away to avoid them. I would not have left my boarding-house if Proudfoot had not told me to keep clear of them.

36th x int. How many times had you at that time seen Mr. Proudfoot?

Answer. I seen him different times; I don't know the number; several times; about four or five times; may be more, *more*, may be less.

37th x int. When and where did you first make Mr. Proudfoot's acquaintance?

Answer. I believe it was on Wednesday of last week, at this office, I believe.

269 38th x int. When and where were *were* you first informed that you were to be a witness in this case, and by whom?

Answer. I was first informed on Clark Street bridge, last Wednesday, by Captain Berry.

39th x int. Where does Captain Berry live, and how came he to tell you anything about it?

Answer. He lives in Chicago, in the west division, in the western part of it. I was walking across Clark Street bridge, and he caught me by the arm and he walked me up here.

40th x int. Were you previously acquainted with Captain Berry, and how long had you known him?

Answer. I have known him a year, and he has known my folks in town some sixteen years; he knows my brother.

41st x int. State all the conversation you had with Captain Berry on the bridge that morning?

Answer. I did not have any.

42d x int. Did you have any conversation with any one on the bridge that morning?

Answer. No, sir.

270 43d x int. Did any one have any conversation with you there on the bridge?

Answer. No, sir.

44th x int. Did you not just now testify, in reply to my question as to when you first knew that you were to be a witness in this case, that you were told for the first time that morning, on the bridge, that you were to be a witness in this case?

Answer. Yes.

45 x int. When and where were you first informed that you were to be a witness in this case, and by whom?

Answer. Just as I was walking off of the bridge with Captain Berry, on last Wednesday, in the forenoon; Captain Berry informed me.

46th x int. Now relate all the conversation you and Captain Berry had on the subject at that time.

Answer. He was only telling me what he wanted with me, marching me off pretty fast. He said they wanted me for a witness in the case, and that he heard I knew something about the case. He said I was the one they were looking for. I believe that is all he said.

47th x int. Did you say anything? and if you did, state all you said.

Answer. I told them I knew something about it; that is all I said.

48th x int. Had you, before that time, heard that a lawsuit was pending in

reference to that collision? If so, when, where, and how did you first hear of it?

271 Answer. I had heard of the lawsuit before that time; I heard of it in Chicago last fall; I heard folks talking about it; I heard them talking about it on board of the propeller Ottawa.

49th x int. Were you on board of the propeller Ottawa after the suit was commenced? If so, how long and how often? Did you remain aboard of her after the suit was commenced?

Answer. I was on board of her several times after the suit was commenced to see the boys; I was there perhaps an hour or so.

50th x int. Which of the boys did you see on board of the Ottawa at that time; mention all of them that you know.

Answer. I saw both wheelsmen—Richard Bruseau, and the other is named "Lory;" don't know his other name; I saw William Higgins, a fireman; I saw William Parsons, the engineer; I saw the mate, George Baldwin; there were others there, I don't know their names.

51st x int. At those visits you made on board the Ottawa did you have any conversation with any one you met there about the collision, or the suit that was pending on account of it? If so, state with whom you conversed on those subjects, and how frequently.

Answer. I did not have any that I mind; I do not remember.

272 52d x int. If, as you say, you had no conversations about the collision or the lawsuit, how did you learn from them that the lawsuit was pending, as you say you did?

Answer. At the Cleveland House; I learned it from them where I was boarding; the wheelsman came up there to see me once in a while.

53d x int. Did you not testify yesterday, in reply to my question when, where, and from whom you learned that the suit was pending, that you learned it on board of the Ottawa from the hands when you went on board to visit them?

Answer. The hands that belodged to the Ottawa told me; I don't know that I said yesterday that I learned it on board of the Ottawa from the hands when I went on board to visit them; if I did so, I did not exactly understand the question.

54th x int. I now ask you again from whom, when, and where you first learned that the suit was pending?

Answer. I could not say for certain whether it was on board of the Ottawa or at the Cleveland House; I learned it from some of the hands belonging to the Ottawa; I believe it was the wheelsman told me; I don't know when it was; it was last fall some time.

55th x int. You say it was either on board of the Ottawa or at the
273 Cleveland House. What house did you board at at that time you refer to in your answer; what was it called, where was it situated, and who kept it?

Answer. I boarded at the Cleveland House; at that time on Dearborn street, between North Water and Kinzie streets; kept by George L. Bartlett.

56th x int. State whether you boarded at that house from the time you left the Ottawa; how long you remained there; whether you boarded at any other places before you left the city; and if so, what other places, and when you left.

Answer. I boarded there about three weeks, and then I shipped. I boarded there from the time I left the Ottawa till I shipped; I boarded at no other place; I left the city a year ago last fall—the same day the Globe blew up; I went to St. Louis.

57th x int. During the time you were here in the city, after you left the propeller Ottawa, did you have any conversations or listen to any conversations of other persons about the circumstances of the collision in question here, or the suit that had been brought in consequence of it? If you did, state with whom you conversed, or whom you heard converse on the subject.

Answer. There were several of them asked me if I knew anything about, or if I knew how it happened. I told them I suppose it was because we
274 had no lights out; he was a Norwegian, lives on the west side of the river; Hollirn was one I conversed with; I don't know his full name. I spoke to several others on the propeller Mears. I had conversation with Brusseau, the wheelsman on board of the Ottawa.

58th x int. After the accident occurred, and before you arrived in Chicago, and while you were on your passage from the place of the accident to Chicago, was the subject of the collision talked of in your presence on board of the propeller; if so, by whom and how frequently? And state whether you participated in any such conversations.

(Objected to by Mr. Proudfoot.)

Answer. I don't mind of hearing any one talk about the collision that I can recollect.

59th x int. Refresh your recollection, and tell me whether the subject of the collision, and the cause of it, was not frequently discussed by persons on board of the propeller during the next day after the accident happened, and other times during the passage to Chicago?

(Objected to by Mr. Proudfoot.)

Answer. I don't know how they felt; I did not hear them say much about it; I did not mind every word they said; I don't know what they did say.

60th x int. Do you recollect one word that was said on board of the propeller, by any one, upon the subject of the collision during the time mentioned in the last interrogatory? If you do, state by whom, and what was said.

275 Answer. I could not say anything that was mentioned there; I was a little sick at the time.

61st x int. Was your sickness a reason why you did not hear anything that was said? If yea, state what was your condition of health, and whether you were disabled by, from the performance of your duty; and if not, why do you mention your sickness in this connexion?

Answer. My sickness was not a reason why I did not hear anything that was said; I had a touch of fever and ague; I was not disabled from the performance of my duty; well, because when my watch was off I generally went into my room, and did not hear them talk much; that is the reason that I mentioned my sickness.

62d x int. Did you, any time after the accident, and before you left the propeller, mention the fact to any one that there were no lights on the propeller at the time of the collision, or did you hear that fact mentioned or referred to by any person? If you did mention it, state to whom you mentioned it, and when and if you heard it mentioned by any one, state who mentioned it, when, and where.

Answer. I did not mention it to any one after the accident, and before I left the propeller, that there were no lights on board of her; I don't mind or remember that I heard any other person talk about there being no lights on board.

276 63d x int. Did you, at any time before you left town last fall, ever mention to any one of the hands or officers of the propeller "Ottawa," or to her owner, or any one concerned in her, the fact that there were no lights burning at the time of the accident?

Answer. Yes, I was talking to the wheelsman about it, Richard Bruseau; I do not recollect of mentioning it to any one else connected with the propeller; I might have done so.

64th x int. Where did you first mention it to this Richard Bruseau, and when?

Answer. I could not say exactly when it was after the accident happened and I left the propeller; I suppose I mentioned it to him at the Cleveland

House, where I boarded, and I might have mentioned it to him on the road.

65th x int. State the circumstances that led you to mention the subject to Richard Bruseau, and state all that was said by you and him upon the subject at that time.

Answer. I suppose we happened to commence talking about it, and all that was said I don't know; I know I told him the lights were not burning; what he said I don't mind much about it, it was so long ago; I did not think I would be brought up in the case.

277 66 x int. You say you believe you mentioned it to Richard Bruseau. have you a clear recollection that you did mention it to him? If so, refresh your recollection, and state when you mentioned it, who was present, how the conversation commenced, and whether it was before or after you had learned that this suit had been commenced.

Answer. I am pretty positive that I did mention it to Brusseau; I mentioned it there at the Cleveland House, where I staid; I don't know that any one was present; I don't know how the conversation commenced; we commenced talking about it; it was after I had learned that this suit had been commenced.

67th x int. You say you didn't suppose you would ever be brought up. Did you not know, when you knew a suit had been commenced, that the fact of there being no lights on the propeller was an important fact to be proved in the case?

(Objected to by Mr. Proudfoot.)

Answer. Yes, but there were others that knew that besides me.

68th x int. What others knew it, and how do you know that they knew it?

Answer. There were two or three trying to keep one of the lights, the red one, lit, but they could not do it; one named "Aleck," a Frenchman, and the other "Henry," a Dutchman; they were deck hands.

278 69th x int. Did you ever communicate the fact that there were no lights on board of the propeller at the time of the accident, or mention it in any manner to the owner, officer, or hands of the boat, except what you say you said to Brusseau; or did you ever hear the fact referred to by any such persons in conversation?

Answer. There is William Higgins, up in a distillery in Chicago; I was up to see him last Friday, and I told him about it; we were talking about, and I heard *him* speak about it; that was lately; I believe there were no others that I spoke to about it, that I recollect; I am pretty sure there were no others; the captain was in the cabin of the propeller the other morning; I spoke to him about it; I never heard the fact referred to by any such persons in conversation.

70th x int. You said you heard Mr. William Higgins speak about it last Friday: what did he say about it?

Answer. He said there were no lights burning at the time of the collision; he said there were only two lights burning on board of the boat; he said it was the engineer's lamp in the engine-room and the binnacle light in the pilot-house.

71st x int. Where was it that he said that, and in whose presence?

Answer. It was on the west side of the river by the rolling-mill, that distillery there; Mr. Proudfoot was there when he made this statement; no

279 others.

72d x int. In what particular place were you when he made that statement—in the rolling-mill, or where?

Answer. We were not in the rolling-mill; we were standing around, walking about.

73d x int. What did you go to see Mr. Higgins for?

Answer. Mr. Proudfoot wanted me to go up and show him where he was; I did not go up on any particular business.

74th x. int. Did you not tell Mr. Higgins in that conversation on Friday last, you have referred to, that you were getting one dollar and a half for being a witness for the plaintiff, and that he would get the same if he would be a witness, and that he had better do it?

Answer. I told him I was getting a dollar and a half a day for witness fees; I told him he could get the same if he was there, if he would come; I told him he had better do it.

75th x int. Did you not in that same conversation, while in the rolling-mill, tell Mr. Higgins that you expected to make two or three hundred dollars before he got through the case, or words to that effect?

Answer. I told him I might, if it was carried on to Washington.

280 76th x. int. Did you not tell him that he could make as much if he had a mind to testify for the plaintiff, or words to that effect?

Answer. I don't believe I did.

77th x. int. Did Mr. Higgins tell you in that conversation that when the collision occurred he was in his berth, or in his room, and not on deck, and didn't know whether the lights were burning or not?

Answer. No, he didn't.

78th x int. Did he tell you any part of that?

Answer. I do not mind of him telling me anything about that.

79th x. int. Did you tell him in that same conversation that Dick Bruseau, on the night of the collision, called you up to assist at the wheel about ten or fifteen minutes before your watch?

Answer. No, I did not.

80th x int. Do you know a man by the name of Thomas Lock, a porter on board of the propeller?

Answer. Yes.

281 81st x int. Do you recollect of conversing with him, or in his presence, on the day after the collision, about such collision, and about where you were when it happened; and did you say in such conversation that "when the collision occurred you were in your berth, and you jumped out damn quick," or words to that effect?

Answer. No, sir; I no not remember of conversing with him at that time; I never told him any such language.

82d x int. On other days after that, and during your passage to Chicago did you not, in conversation with Locke, or in Locke's presence with others, repeatedly state that you were in your berth when the collision happened?

Answer. No, sir; I don't believe I ever spoke to him a word about it.

83d x int. Did you, after your arrival in Chicago, and while on board of the propeller, on some of the occasions when you say you visited the persons that were on board of her, converse with the said Locke, or with others in his presence, about being a witness in the case; and in such conversations did you say that you would be a witness for either side; or would you swear for either side if they would give you enough for it, or words to that effect?

Answer. No, sir.

Adjourned the examination, May 28th, at 12 m. to 2 p. m.

282 84th x int. You say, sir, you saw two persons attempting to make the red light burn; state again the names of those persons, and what time you saw them attempting to make it burn; mention all the persons who were present and saw it; what was done to the light, and what was the reason why it would not burn.

Answer. Their names were "Aleck," a Frenchman, and Henry, a Dutchman; I don't know their full names; they were deck hands; it was a little after the collision that I saw them attempting to make it burn—about eight o'clock, or may be a little after; I don't know who were present; I suppose most of

them saw it; all those who passed by saw it; I don't know who passed by; I passed by and saw it; I could not mention what others passed by. They tried to light the lamp, but it went out; I suppose the wind blew it out; I don't know why it would not burn; I suppose the wind blew it out; I know no other reason.

85th x int. Did you see them attempting to light any other lights but the red one? If you say you did, state what other lights, and whether they succeeded, and who did it.

Answer. I did not see them light any other lights; some one came into the pilot-house and took out the bright light. The lights were all lit at twelve o'clock, when I was relieved from the wheel; who it was that lit them I do not know.

283 86th x int. What time was it that some one came into the pilot-house and took out the bright light? Was it before or after the collision? If it was after the collision, state how long after.

Answer. It was after the collision as near as I could tell; it was about half past eight o'clock.

87th x int. Where was the bright light at the time of the collision? And state whether it was burning or not; and state how you know whether it was or not.

Answer. It was in the pilot-house, setting down on the floor; it was not burning; it was burning when I opened the door to go in, and then it went out; I saw it go out.

88th x int. Had you a green light on board of the propeller? State whether it was burning at the time of the collision; if not, when it went out; where it was, and when it was relighted.

Answer. There was a green light on board of the propeller; it was not burning at the time of the collision; I did not see it go out; it was on the starboard side, upon its place; I don't know when it was relighted; they were all burning at twelve o'clock.

89th x int. State where each of these lights were ordinarily placed at night.

Answer. The red light was on the larboard side, on the top of the cabin, pretty well on the edge; a little forward of midship there is a little
284 stationary ring on the deck of the cabin where they fasten them. The green light is on the starboard side, just abreast and opposite the red light. The bright light is on top of the pilot-house.

90th x int Whose duty was it to fix, trim and place those lights, and who actually did it on that night, and ordinarily?

Answer. It is the porter's business; whether he did it that night I don't know.

91st x int. What time, according to your recollection, did the accident occur?

Answer. As near as I could judge, about half past seven o'clock; it might have been earlier and might have been later.

92d x int. What was your duty on board of the boat, and what were your hours of duty and of rest on that night?

Answer. I was wheelsman on board of her; his duty is to steer the boat; while loading he is in the hole to see that the cargo is stored right; I was on duty from eight to twelve in the evening; I got relieved at six o'clock that evening, and came on again at eight; my watch was to come on then.

93d x int. What were these lights; how were they constructed, and with what were they filled; and how long would they burn without refilling?

285 Answer. They were signal lights; they were round, about the size of a bucket, something taller; they are as big at the top as they are below; I don't know with what they were filled; I never filled them or trim-

med them, or had anything to do with them; I don't know how long they would burn without refilling; I have seen them burn all night and showed a good light in the morning.

94th x int. Do you know where they were ordinarily kept in day time? If you do, state.

Answer. I don't know; I know where they ought to be; they ought to be kept in the porter's room.

95th x int. State whether on the night of the collision it was dark before you were relieved from the wheel or not; if not dark, whether the sun had set, and how long it had been set.

Answer. It was not dark before I was relieved from the wheel; the sun I don't believe was set; I did not take any notice of the sun; I could not say for certain.

96th x int. State where you went when you were relieved from the wheel, and what you did; and whether you were on deck from that time till you were called to relieve the wheelsman; and if on deck, for what purpose.

Answer. I went to my supper in the cabin, and then I went into my
286 room; and I had a song book that I was reading; some of my clothes fell down off the peg, and I took and laid them away; I staid there till "Aleck" came in after me and told me the wheelsman wanted me to help him; I was not on deck; I opened the door and looked out; I did not turn in.

97th x int. You stated in your direct examination that up to the time of the collision they had no signal lights on board of the boat; now how do you know they hadn't?

Answer. There was no lights burning when I went out of the pilot-house to take the wheel; I don't know whether they had any lights before that or not.

98th x int. What did you open the door and look out of your room for; what led you to do that?

Answer. To see if it was clouding up.

99th x int. Was that before or after dark?

Answer. It was after dark.

100 x int. Did you notice then whether the lights were lighted then or not—any of them?

Answer. I don't mind whether I looked up or not.

101st x int. Then you have no means of knowing whether the lights
287 were lighted at all or not up to the collision, have you?

Answer. No, sir; I could not say whether they had been light or were burning.

102d x int. Did you see any one trimming the lights, or carrying them to their places that night?

Answer. No, sir; I don't believe I did; not till after the collision.

103d x int. Did you see any lights lit in any part of the boat before the collision?

Answer. I did not see any except a little one I had in the room on the floor.

104th x int. State whether any one, and if any one, who, occupied the same room with you.

Answer. Richard Bruseau occupied the same room with me.

105th x int. How long before eight o'clock were you called to assist at the wheel? before your watch commenced I mean.

Answer. I think about fifteen minutes, as near as I could judge.

106th x int. Who came to notify you that you were wanted at the wheel?

288 Answer. It was a Frenchman, a deck hand; his name is "Aleck."

107th x int. What was the reason why you were wanted at the wheel?

Answer. She steered pretty wild, and he could not manage her.

108th x int. Had any more than one man been required at the wheel during the previous day and evening up to that time? If not, state the reason why two were then required.

Answer. There was not more than one man required up to that time. It commenced then to blowing hard and getting dark.

109th x int. State what had been the weather during the afternoon and evening; whether any change occured about that time; and if so, state what it was, and how it continued during the night, and whether the wind abated or increased from the time of your coming on deck.

Answer. It was pretty nice weather in the afternoon; not much wind; along toward evening it commenced breezing up; I don't know whether any change occurred; it was kind of squally; it was blowing pretty hard all night; the wind kept about the same thing, while I was on watch, till
289 twelve o'clock, as near as I can mind.

110th x int. State whether there was any change in the wind from six o'clock, when you were relieved, till the time you came on deck; and if so, state what change it was.

Answer. There was a change; it was blowing harder when I came on deck.

111th x int. Did the blowing continue to increase after you came on deck, or did it subside?

Answer. As near as I can recollect, it kept about the same gauge all night, till twelve o'clock, while I was on deck.

112th x int. After the collision occurred who steered the vessel till twelve o'clock?

Answer. I did, except only a few minutes when I went back to see what damage was done.

113th x int. If it required two men to steer the vessel when you first came on deck, and wind continued the same all night till midnight, why didn't it require two all the time?

Answer. Because I could steer where he couldn't; I am an older hand at it.

290 114th x int. Were two men usually required to steer that vessel? If not, under what circumstances were two required; and how frequently, while you were on her, did it require two men to steer her?

Answer. Two men were not usually required to steer this vessel. In heavy weather two were required. I could steer her in any weather alone. I had to help him twice going down when the vessel was loaded. There was a storm on Lake Huron, and I had to help him one night.

115th x int. Did you ever, at any other time than this you speak of, have to help him to steer her when she was light?

Answer. Not on the broad lakes, but on the creek; it is customary on the creeks to have two at the wheels.

116th x int. Then this ten or fifteen minutes before that collision is the only time, during the whole period you were on the Ottawa, that she required two men to steer her on the lakes when she was light, is it not?

Answer. I believe that is the only time.

117th x int. Hadn't she been steered by one man many times in much rougher weather than it was that night?

Answer. Yes; but not by him, Bruseau.

118th x int. How long had Bruseau been wheelsman on board of her?

291 Answer. I should judge between three weeks and a month.

119th x int. How long have you known Bruseau, and what has been his occupation since you knew him?

Answer. I have known him about a year. He was a deck hand on board of the Ottawa when I shipped as deck hand on her. He went away a few trips, and when he was away I was wheelsman.

120th x int. Do you know where Brusseau is now?

Answer. I don't know.

121st x int. Does the Ottawa steer hard or easy?

Answer. When she is loaded she steers mighty hard; when light she steers a little easier. I don't know how she steers now she has a new rudder in.

122d x int. When you were called from your room to assist the wheelsman, did you go directly to the wheel from your room? If you did not go directly, where did you go, and what for?

Answer. I went directly from my room to the wheel. (I looked up to the lights to see if they were burning.)

This, included in parenthesis, Mr. Van Aman objects as not being responsive.

292 123d x int. Did you go directly from your room to the wheel, or did you go out of your course; and if you did go out of your course, where did you go, and what for?

Answer. I went a few steps out of my course. I did not go for anything. I went pretty near the bow of the boat; that was but a few steps out of the course. I went within four feet of the stern.

124th x int. Why did you not go directly from your room to the wheel; and what cause had you for not taking the shortest route to the wheel?

Answer. I went out there so I could see whether the bright light was burning or not. I generally make a practice of seeing whether the lights are burning when I relieve my partner.

125th x int. What reason, if any, had you for thinking that the light was not burning?

Answer. I had no reason. I make it a practice, most generally, to see if the lights are burning.

126th x int. You say you most generally look to see if the lights are burning What object had you for looking, and what did you do if they were not burning?

Answer. The first man I ever wheeled with on the lakes told me he always did so, and I followed his example. I go and tell the porter when

293 they are not burning.

127th x int. What did you do in this case when you found they were not burning?

Answer. I went into the pilot-house and took the wheel. I thought it was better for me to do that than to hunt the porter up.

128th x int. Did you see the green light when you came from your room?

Answer. I went to look for it, but could not see it burning.

129th x int. Could you tell whether the lantern was in its place that contained the green light?

Answer. I believe the lantern was there, but it was not burning; it could easily have been seen if it was lit. I would not say for certain that the lantern was there.

130th x int. What do you mean by saying you believe it was there? Do you mean that you have forgotten whether it was there or not, or that you could not see whether it was there or not?

Answer. I have not forgotten, but I am not certain whether it was there or not. I say now it was there.

131st x int. If you say now it was there, why didn't you say so

294 when I first put the question to you?

Answer. Well, I kind of studied over a little.

132d x int. How near did you go to the green lantern—the nearest?

Answer. Well, I think it was about fifteen feet, the nearest.

133d x int. Was the red lantern in its place?

Ans. Yes, sir.

134th x int. Was the white lantern in its place? If not, where was it?

Answer. No, sir; it was in the pilot-house.

135th x int. Was it burning; and if so, what was done with it, if anything?

Answer. It was burning when I opened the pilot-house door; when I opened the door it blew out.

136th x int. Whom did you find in the pilot-house, if any one?

Answer. Richard Brusseau.

137th x int. What had become of the man that called you up, and where did he go?

295 Answer. I don't know what became of him, or where he went.

138th x int. You say you could steer that vessel in any kind of a storm without difficulty, do you?

Answer. Yes, sir.

139th x int. Did you relight the white light?

Answer. No, sir.

140th x int. Why didn't you?

Answer. I had enough to steer the propeller and keep her in trim.

141st x int. Why did you not send Mr. Brusseau to have the porter do it, if you could steer the vessel alone?

Answer. I don't know why I didn't.

142d x int. Did you not think of it?

Answer. Not at the time; I did not. I had enough to do to keep my eye on the compass and keep the boat steady, without thinking about the light.

143d x int. You thought of the subject of the lights, and looked to see whether they were lighted or not, did you not; and took time enough to ascertain that?

296 Answer. Yes, sir; I did not take much time to do it.

144th x int. And yet you say you didn't think to light them or have them lighted, do you?

Answer. I had enough to think about without thinking about lighting them.

145th x int. You could manage the whole alone without the aid of Brusseau, couldn't you?

Answer. Yes.

146th x int. What hindered you from sending Mr. Brusseau to light those lamps or have them lighted?

Answer. The way the boat was running around, I had enough to do to keep her steady, without sending any one to look after the lights.

147th x int. Is that the reason why you did not send Brusseau to look after the lights?

Answer. Yes, sir.

148th x int. Was anything said about lighting them between you and Mr. Brusseau at the time?

297 Answer. No, sir.

149th x int. Didn't you tell Mr. Brusseau that the lights were all out?

Answer. No, sir.

150th x int. Was Mr. Brusseau where he could see whether they were out or not?

Answer. He could not see whether they were out or not if he was minding his business.

151st x int. Why didn't you send the man that called you to relight the lights?

Answer. The minute he called me he walked off, and I had not seen whether they were lit or not when he went away.

152d x int. You could see from the door of your room whether the red light was lit or not, couldn't you?

Answer. I couldn't without stepping outside.

153d x int. Was the man that called you out of sight before you knew that the red light was out?

Answer. Yes, sir.

154th x int. Do you mean, by stating that the man had gone before you knew that the lights were out, that you would have sent him to relight them if he had been there?

298 Answer. Yes; I would have told him to relight the lamps; of course I would.

155th x int. How long was it after you went to the wheel before the collision happened?

Answer. I don't think it was over three minutes.

156th x int. Did you see the vessel that struck you. And if so, did you see her before or after she struck?

Answer. I did not see her.

157th x int. Did you see any person on the deck of your boat after you came out of your room, before they called you, besides the other wheelsman. If so, whom?

Answer. I did not see any one.

158th x int. What was the first notice you had of the collision, or that anything had happened, or was about to happen?

Answer. I believe it was the mate who came running there—George Baldwin was his name—and grabbed a hold of the whistle rope and blowed the whistle; this was after they struck.

159th x int. Where is that whistle rope that he took hold of?

Answer. It runs from the pilot-house back to the whistle.

299 160th x int. How long was it after it struck that he came there and took hold of the whistle rope?

Answer. It was a very short time; it could not have been over a minute or two.

161st x int. Was any whistle sounded, or signal of any kind given, before they struck?

Answer. Well, I don't know; I did not hear it.

162d x int. Was you not in the pilot-house all the time, from the time you took the wheel till the collision?

Answer. Yes, sir.

163d x int. Was any other person, beside you and the other wheelsman, in the pilot-house from the time you took the wheel till it struck?

Answer. No, sir.

164th x int. Where, what place or places, must the person be to blow the whistle?

Answer. They can be in several places and blow it. They can go to the whistle, and blow it from any part of the cabin, can blow it from the pilot-house inside, and can blow it from where the captain stands, on top

300 of the pilot-house; it leads from the pilot-house back to the whistle, and you can blow it from any place where you can get hold of it.

165th x int. You say that no one came into the pilot-house and blew the whistle—the mate, or any one else—until after the collision?

Answer. No, sir.

166th x int. Could you perceive or feel the collision when the vessel struck?

Answer. No; I did not know what it was—whether the smoke-pipe had fallen down or the engines bursted.

167th x int. What did you perceive—any noise, jar, or anything?

Answer. It made a big noise and jarred her.

168th x int. State whether you remained in the pilot-house after the collision. If you didn't, state where you went, whom you saw, and what they were doing.

Answer. I remained there about an hour, very nigh, after the collision. I did not leave the wheel at the time of the accident.

169th x int. You say you did not leave the wheel or the pilot-house
301 for about an hour after the collision; at what time was it, then, that you saw them attempting to relight the signal-lights, and was it while you were still in the pilot-house?

Answer. I did not see them trying to relight them.

170th x int. Have you not testified, both on your direct and cross-examination, that you saw two of the deck hands try to relight the red lights? If you did, say so. How do you reconcile that with what you now say, that you did not see them trying to relight them?

Answer. They could not light them; they tried, but couldn't.

171st x int. When and where was it that they tried to relight them and couldn't?

Answer. It was in a little gangway right by the captain's office. It was about an hour after the collision; I went out to see what damage had been done; Brusseau then took the wheel for a few minutes.

172d x int. You say that the white or bright light you found in the pilot-house at the time you went in to the wheel. State whether, at the time you went out and saw them trying to light the red light, if the bright light had been taken out of the pilot-house; and state who took it out, and when and whether it was lighted before it was taken out.

302 Answer. It had been taken out, but I don't mind who took it out; I guess it was taken out about half an hour after the collision, as near as I can come to it; it was not lit before it was taken out; if it had been, I would have known who took it out.

173d x int. Did you see it taken out of the pilot-house?

Answer. No, sir.

174th x int. If I understand you correctly, then, you did not leave the pilot-house at all for about an hour after the collision. Is that so?

Answer. Yes, sir.

175th x int. And if I understand you also, at that very time, about an hour after the collision, you saw two of the deck hands trying to make the red light burn near the captain's office. Is that so?

Answer. Yes, sir. As I went aft they could not, and as I came back they could not.

176th x int. How long were you away from the pilot-house; where did you go, and whom did you see?

Answer. I was away about five minutes, as near as I can judge. I did not see any one but the two that were trying to light the red light;
303 I went to the hind end of the cabin; they were cursing about the light because they could not light it.

177th x int. You say that you did not see the white light taken out of the pilot-house; how, then, can you say that it was taken out about a half an hour after the collision?

Answer. I looked down and it was not there.

178th x int. You had been in the pilot-house all the while, hadn't you?

Answer. Yes, sir.

179th x int. Did you see any one coming in and going out?

Answer. I did not notice any one; I had enough to do without looking after them.

180th x int. What attracted your attention to the light, and enabled you to see the light was not there a half an hour after the collision, and what enabled you now to fix the time?

Answer. I don't know that anything attracted my attention; I happened to look down and saw the light was not there.

The examination was here adjourned at ½ past five o'clock p. m., May 28th, till ten o'clock a. m., May 29th, 1862.

304 181st x int. After Alexander called you up and you went to the pilot house, how long did Brusseau stay after you got there?

Answer. Well, I don't know; he staid there until after I went to look what was up; I guess about an hour.

182d x int. You say that after Alexander called you, you went at once on deck forward of the pilot-house, where you could see the places of the red and green lights, that they gave no indications of being lighted, do you?

Answer. I went to see if the bright light was burning when I went out there. I did not say so. I looked up as I went out of my door to see if the red light was burning; then I went forward on the bow to see if the bright light was burning, and as I was going to the door of the pilot-house I could see that the green light was not burning.

183d x int. Then it seems that you now say that before you went to the pilot-house you did go forward where you could see the places of the red and green lights, and that they were not burning?

Answer. I did not go there to see if they were burning or not, but went there to see if the bright light was burning. I could see if the red and green lights without going to the bow.

305 184th x int. You say you went forward to see if the bright light was burning; nevertheless, did you not at the same time look to see if the red and green lights were burning; and have you not testified that at that time you did so look and found them not burning?

(Objected to by Mr. Proudfoot, on the ground that the question has been fully answered to the answer to the 182 cross-interrogatory, and that it is again put to the witness solely with the view to harass him and annoy him.)

(The counsel for the respondent desires the commissioner to note the insinuations of the counsel for the libellant, that the last question was put merely to harass the witness is exceedingly uncalled for, false, and impudent.)

Answer. I went there to see if the bright light was burning, but before I went forward I saw that the red light was not burning, and going from forward to the pilot-house I seen that the green light was not burning. I believe I have not testified that when I was forward that I looked and saw that the red and green lights were not burning.

185th x int. After you came out of your room and went forward, did you then go aft of the pilot-house until about an hour after the collision, when you say you went to see what damage was done?

Answer. I did not go aft of the pilot-house till about an hour afterwards.

306 186th x int. How, then, can you say that the green and red lanterns were in their places?

Answer. Because I seen them there.

187th x int. When did you see them there? State particularly the time and your position at the time you so saw them.

Answer. I seen them there when I was called out of my room, between half-past seven and eight o'clock, as near as I can judge. I saw the red

light just as I came out of the room, as I looked up; and as I was going forward aft of the pilot-house I saw the green light.

188th x int. If the green light was not lit, as you have repeatedly sworn, how could you see it when it was placed about midships and you were forward of the pilot-house?

Answer. It was not placed midships.

189th x int. Where was it placed?

Answer. I don't think it was more than fifteen feet aft of the pilot-house, on the top of the cabin.

190th x int. Have you not sworn that the red and green lights were at that time just about midships; and do you not know that such was the fact?

307 Answer. I have not so sworn; they were not midships.

191st x int. If the green light was only fifteen feet aft of the pilot-house, and you were forward of the pilot-house, and it was not lit, how could you see it, as you have sworn you did in answer to the 187th cross-interrogatory?

Answer. I could see fifteen feet. I was not forward of the pilot-house when I saw it. I was just alongside of the pilot-house, coming towards the door of the pilot-house.

192d x int. Do I understand you to say, then, that the green light was not lit; but that, as you approached the pilot-house on that evening, you looked at the place it usually occupied and saw the lantern?

Answer. I looked there and saw the lantern, and it was not lit.

193d x int. At the time when Aleck came to your state-room to call you up, were you dressed; and if so, how much were you dressed; had you your coat and boots off or on, or either of them?

Answer. I didn't have any boots; I had shoes. I had them on. I had my coat off. I was dressed all but my coat.

308 194th x int. Was your state-room door open or shut; and if shut, was it locked?

Answer. It was shut, but not locked.

195th x int. Were you lying down at the time or sitting up?

Answer. I was sitting up.

196th x int. Had you a light burning at the time; and if yea, where did you light it?

Answer. Yes; I had a little lamp lit sitting on the floor. I lit it about seven o'clock.

197th x int. Did you light your lamp before or after you looked out of your cabin to see if it was cloudy?

Answer. Before I looked out.

198th x int. If the light was lying on the floor, in what corner of your state-room was it lying?

Answer. The next corner to the pilot-house.

199th x int. What kind of a light was it? Describe it particularly.

Answer. It was a little lamp that had been in a lantern, a little round lamp.

309 200th x int. Had you a stool or little chair in your state-room? If so, how high was it?

Answer. I had a little stool, about a foot and a half, perhaps a little more.

201st x int. Were you sitting on the stool?

Answer. Yes, sir.

202d x int. Were you leaning back or forward?

Answer. I don't mind how I was leaning.

203d x int. What were you doing?

Answer. A part of the time I was reading a book, and a part of the time I was picking up some clothes that fell off of the nails.

204th x int. Did you stop reading to pick up the clothes?

Answer. Yes; but I had the book in my hand.

205th x int. What was the first thing you did after you went to your state-room?

Answer. I looked for my song book.

310 206th x int. How long did you read your song book?

Answer. I was reading when they came and called me.

207th x int. Who came and called you?

Answer. A little Frenchman; they call him Aleck.

208th x int. How was he dressed at the time?

Answer. I don't know.

209th x int. Did he come into the state-room at the time?

Answer. No, sir.

210th x int. Did he open the state-room door?

Answer. He opened it a little piece; about half way.

211th x int. What did he say?

Answer. He told me that Dick wanted me right away.

212th x int. What was his manner; was he hurried, as if he wanted you in a hurry?

Answer. Yes; he was in a little in a hurry.

311 213th x int. Did you think there was any necessity for your going right off?

Answer. I did not know hardly what to think; but I went right off.

214th x int. Did you stop to put on your coat?

Answer. No, sir.

215th x int. You thought it best to obey orders at once?

Answer. Yes.

216th x int. Now state to us how it was that you were in such a hurry that you did not know what to think; didn't stop to put on your coat; that you had time to examine the side-lights and the head-light of the steamer.

Answer. It did not take hardly any time to do that—to look at the lights.

217th x int. What object had you in looking at the lights, when you were in a hurry?

Answer. I most generally make it a practice to look at them, to see if they are burning, before I took a hold of the wheel.

218th x int. How long have you made it a practice to look at the

312 lights, and on what vessel did you first commence it?

Answer. Ever since I commenced wheeling; I suppose about four years. I first commenced it on the propeller "Charles Mears."

219th x int. Is it among the duties of a wheelsman, when piped to duty, before doing so, to examine the lights?

Answer. No, sir, I believe not.

220th x int. Have you, whilst on board of the propeller "Ottawa," when called to the wheel, examined the lights before going to the wheel, found them out, and give orders to have them relit, before going to the wheel? And if yea, state when, where, and who was the officer of the deck at the time, the name of the wheelsman you relieved, and the name of the hand to whom you gave the order, and under what circumstances.

Answer. No, sir, not that I mind.

221st x int. Do I understand you to say that you never found the lights of the propeller Ottawa out, except on this occasion?

Answer. I never saw them out until this time, that I know of.

313 222d x int. And, sir, when you did so find them out, you gave no orders to have them relit? Is that so?

Answer. No, sir, I gave no orders.

223d x int. It was not your business to give any such order, was it?

Answer. No.

224th x int. As it was not your business to give any such order, if you found them out, and you gave no such order when you did find them out, why did you make it a practice to look to see if they were out?

Answer. If I saw them out and was not very busy, I would go and tell the porter, the man who takes care of them.

225th x int. You have stated as a reason why you gave no such orders in this case, that you were too busy; then, sir, your reason fails in this case, for making it a practice. You have stated that you only make it a practice when you are not too busy, to light them when you found them out, and in this case you were too busy; how do you explain this?

Answer. Well, I was too busy; had too much to do to notify any
314 one that they were out. I had a little too much to do at the time.

226th x int. Then why did you go and look at the lights, if you were too busy?

Answer. It was only a couple of steps out of the way. It did not take any time.

Examination of witness adjourned at twelve o'clock m., till 2 o'clock p. m., May 29th, 1862.

227th x int. How far is it, sir, from your state-room to the stern of the boat?

Answer. I guess it may be some twenty or twenty-five feet; it may not be as much; I never measured it.

228th x int. How far abaft the stern was it that you stood when you looked at the head light?

Answer. I don't think I was over four or five foot from the stern, aft.

229th x int. From where you stood, could you see both the red and green lights of the propeller? And if not, why not?

Answer. No, sir; because they were not burning.

315 230th x int. If they had been burning, could you have seen them from where you stood?

Answer. I could have seen the reflect from them if they had been burning.

231st x int. Did you go any nearer than that to examine them, to see if they were burning?

Answer. Yes, sir.

232d x int. How much nearer did you go, and did you make a careful examination?

Answer. I went within about fifteen feet of them; I saw that the green light was not burning.

233d x int. Which one did you first go within fifteen feet of, the red or green light?

Answer. I seen the red light just as I came out of my room; it was not burning; I did not see any light.

234th x int. How long did you remain looking at the head light; and whilst you were there, did you see if the head light was on top of the pilot-house?

Answer. I did not remain no time at all. I see the light was not
316 there. I kept walking on towards the pilot-house.

235th x int. How far is the pilot-house aft the stem of the boat?

Answer. Well, now, I don't know. It may be twenty feet; it may be more or less.

236th x int. Do I understand you to say, from where you stood you saw distinctly that the white light was not on top of the pilot house?

Answer. Yes; I am sure there was no light there.

237th x int. Did you have to go out of your way to examine the green light, to get within fifteen feet of it?

Answer. No, sir.

238th x int. How was the lamp lit in your room; did you light it yourself, or did some one bring it to you? If you lit it yourself, how did you light it?

Answer. I lit it myself with a match.

239th x int. Had you a box of matches in your room?

Answer. No, sir.

240th x int. Well, sir, where did you get your matches?

317 Answer. I had them in my pocket.

241st x int. Do you smoke cigars?

Answer. I do very seldom when I am on the lakes; when I am sailing I generally have a pipe and smoke once in a great while.

242d x int. Haven't you stated, during this examination, when cigars were offered you, that you never smoked?

Answer. I never had that answer put to me; that question was never put to me before. Mr. Ryerson offered me a cigar the other day, and I told him I did not feel like it. It depends altogether how I feel; when I am lonesome I smoke. I guess I told Ryerson that I never smoked.

243d x int. Had you a pipe with you on that trip, or did you borrow a pipe when you smoked? If you borrowed a pipe, whose pipe did you borrow?

Answer. I had a pipe with me.

244th x int. What kind of a pipe was it?

Answer. A clay pipe.

245th x int. Did you ever loan it to any of your comrades?

318 Answer. I don't know as I did that pipe; I have often lent deck hands, on board of the Ottawa, a pipe.

246th x int. What deck hands have you loaned your pipe to? Give us their names.

Answer. I know I have loaned it to Patrick Highland; there may have been a dozen more; I don't mind their names. When they wanted to smoke they would go and take it, and then put it back.

247th x int. How many matches had you, and where did you get them, and how long had you carried them?

Answer. I didn't count how many I had; I don't know whether I got them on board of the boat or up town. I don't know how long I had carried them.

248th x int. What do you mean by up town?

Answer. In the city of Buffalo; I might have got the matches in Detroit; I was in both places.

249th x int. How long had you left the port of Buffalo when the collision occurred?

Answer. I could not state for certain; I guess it was four or five days, as near as I can judge.

319 250th x int. How long had you been from Detroit?

Answer. I kept no time.

251st x int. Well, as near as you can judge or guess.

Answer. Well, call it a couple of days. It might not be that long, and might longer.

252d x int. Did you smoke at all between Detroit and Buffalo?

Answer. I guess I did. I most generally do when I am out there at the wheel; smoke once in a while.

253d x int. Do you remember anything about it?

Answer. No; but I know I smoked.

254th x int. How do you know that you smoked between Buffalo and Detroit?

Answer. I hardly ever stand at the wheel four hours without smoking.

255th x int. Was the captain on board when you left Buffalo?

Answer. Yes, sir.

256th x int. Where did you stop at Detroit; how long did you stop;
320 and what did you stop for?

Answer. We stopped at the dock. I don't know the name of the dock. We stopped there somewhere around two hours, perhaps three. We stopped there quite a little spell. I don't know what we stopped for.

257th x int. Who brought your lamp into your room to you? When was it brought, and was it trimmed? and if so, who trimmed it?

Answer. I don't know who brought it, or who brought it. It had been there some time. Me and the other wheelsman done about all the trimming there was to it. It was trimmed.

258th x int. Did you trim it?

Answer. No; not that night.

259th x int. When you went forward to look at the bright light, and saw it was not there, did you see any one on top of the pilot-house? If you say yea, state whom you saw.

Answer. I did not see anybody.

260th x int. If any one had been in the pilot-house at that time, would you have seen them?

Answer. Yes, sir.

321 261st x int. You are sure of that?

Answer. Yes, sir.

262d x int. Did you leave immediately the position where you were standing, looking at the bright light, and go to the pilot-house?

Answer. Yes, sir.

263d x int. At the time you were standing at the stern of the boat, looking for the bright light, did you see the wheelsman in the pilot-house?

Answer. Yes, sir.

264th x int. Did you see any one beside him, either in the pilot-house or at the pilot-house?

Answer. No; I did not see any one but him.

265th x int. When you got to the pilot-house, did you find any one at, in, or on the pilot-house, except the wheelsman in the pilot-house?

Answer. No, sir.

266th x int. You are positive and sure of that, are you?

Answer. Yes.

322 267th x int. You say you looked out of your state-room door to see if it was cloudy. Was this before dark or after?

Answer. It was after dark.

268th x int. You have stated, sir, that your door was shut from the time you went in till Aleck came to call you to go to the wheel; is that so?

Answer. I believe not.

269th x int. What did you state upon that subject?

Answer. It was shut all the time till he came and called me, except when I looked out to see if it was cloudy.

270th x int. What, sir, made you think it was cloudy?

Answer. It was breezing up and blowing hard. I did not know but that it was cloudying up and going to rain.

271st x int. Haven't you stated, sir, that the sun set fair on that evening?

Answer. No, sir.

272d x int. What have you stated on that subject?

Answer. I believe I stated I did not know whether it went down clear, or whether I saw it going down or not.

323 273d x int. When you looked out to see whether it was cloudy or not, did you see the red light burning?

Answer. I did not look.

274th x int. How long before the collision was it before you took the wheel?

Answer. Well, it was about three minutes, as near as I can judge.

275th x int. When you took the wheel how was the propeller heading?

Answer. I believe she was heading about northwest; although he gave me no course when I took the wheel.

276th x int. How do you know that she was heading northwest?

Answer. I looked at the compass.

277th x int. Are you sure of that?

Answer. Yes, sir.

278th x int. Did you, at the time you were at the wheel, before the collision, keep any look-out for vessels, or did you see any vessels or lights around you?

324 Answer. No; I did not keep any look-out for vessels. I saw lights around on both sides of me. I could not help seeing them; they were on both sides of me.

279th x int. Did you state to Brusseau that you saw lights all around? and if you did, state what conversations you had on the subject.

Answer. I did not say nothing to him about it.

280th x int. At this time, and while you were steering, before the collision with Brusseau, did you see the light of any craft approaching you? If you did, state what you saw.

Answer. I seen lots of lights ahead us and aside of us. Those that were ahead of us were coming towards us, going down the lakes.

281st x int. Did you at this time see any light or vessel coming towards you, so as to make a collision with the propeller Ottawa possible?

Answer. Yes. No, not before the collision; they were all around us, carrying bright lights, but were some distance off, though.

282d x int. Do you mean to be understood that before the collision, and while you were at the wheel with Brusseau, you saw no light approaching you that would make a collision with the propeller Ottawa possible?

325 Answer. No, not just then; I did not see any one; those that I saw were away head of us; they did not touch us.

283d x int. As you stood at the pilot-house, would you not have seen any vessel approaching you with a bright light, if it had been only three hundred or four hundred yards off?

Answer. Well, I might have seen them if I had been on the look-out; I was not looking out much for vessels.

284th x int. What was you doing?

Answer. Steering.

285th x int. Did it require all your ability to steer; and if so, why?

Answer. It did require the whole of it at the time; she was running around a good deal when I took the wheel; I was trying to get her steady.

286th x int. What do you mean by "she was running around, and I was trying to get her steady"?

Answer. She would take a sheer off one way and then the other; she would not keep her course.

287th x int. How was the wind at that time; in what direction

326 was it?

Answer. I believe the wind was from the south.

288th x int. How did it strike the propeller?

Answer. It struck it on the larboard side.

289th x int. It would be abaft of the beam, would it?

Answer. It would be about sideways.

290th x int. When you went into the pilot-house, which side of the wheel did you stand on, the larboard or starboard side?

255th x int. Was the captain on board when you left Buffalo?

Answer. Yes, sir.

256th x int. Where did you stop at Detroit; how long did you stop;
320 and what did you stop for?

Answer. We stopped at the dock. I don't know the name of the dock. We stopped there somewhere around two hours, perhaps three. We stopped there quite a little spell. I don't know what we stopped for.

257th x int. Who brought your lamp into your room to you? When was it brought, and was it trimmed? and if so, who trimmed it?

Answer. I don't know who brought it, or who brought it. It had been there some time. Me and the other wheelsman done about all the trimming there was to it. It was trimmed.

258th x int. Did you trim it?

Answer. No; not that night.

259th x int. When you went forward to look at the bright light, and saw it was not there, did you see any one on top of the pilot-house? If you say yea, state whom you saw.

Answer. I did not see anybody.

260th x int. If any one had been in the pilot-house at that time, would you have seen them?

Answer. Yes, sir.

321 261st x int. You are sure of that?

Answer. Yes, sir.

262d x int. Did you leave immediately the position where you were standing, looking at the bright light, and go to the pilot-house?

Answer. Yes, sir.

263d x int. At the time you were standing at the stern of the boat, looking for the bright light, did you see the wheelsman in the pilot-house?

Answer. Yes, sir.

264th x int. Did you see any one beside him, either in the pilot-house or at the pilot-house?

Answer. No; I did not see any one but him.

265th x int. When you got to the pilot-house, did you find any one at, in, or on the pilot-house, except the wheelsman in the pilot-house?

Answer. No, sir.

266th x int. You are positive and sure of that, are you?

Answer. Yes.

322 267th x int. You say you looked out of your state-room door to see if it was cloudy. Was this before dark or after?

Answer. It was after dark.

268th x int. You have stated, sir, that your door was shut from the time you went in till Aleck came to call you to go to the wheel; is that so?

Answer. I believe not.

269th x int. What did you state upon that subject?

Answer. It was shut all the time till he came and called me, except when I looked out to see if it was cloudy.

270th x int. What, sir, made you think it was cloudy?

Answer. It was breezing up and blowing hard. I did not know but that it was cloudying up and going to rain.

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Answer. No, sir.

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Answer. I believe I stated I did not know whether it went down clear, or whether I saw it going down or not.

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Answer. I did not look.

274th x int. How long before the collision was it before you took the wheel?

Answer. Well, it was about three minutes, as near as I can judge.

275th x int. When you took the wheel how was the propeller heading?

Answer. I believe she was heading about northwest; although he gave me no course when I took the wheel.

276th x int. How do you know that she was heading northwest?

Answer. I looked at the compass.

277th x int. Are you sure of that?

Answer. Yes, sir.

278th x int. Did you, at the time you were at the wheel, before the collision, keep any look-out for vessels, or did you see any vessels or lights around you?

324 Answer. No; I did not keep any look-out for vessels. I saw lights around on both sides of me. I could not help seeing them; they were on both sides of me.

279th x int. Did you state to Brusseau that you saw lights all around? and if you did, state what conversations you had on the subject.

Answer. I did not say nothing to him about it.

280th x int. At this time, and while you were steering, before the collision with Brusseau, did you see the light of any craft approaching you? If you did, state what you saw.

Answer. I seen lots of lights ahead us and aside of us. Those that were ahead of us were coming towards us, going down the lakes.

281st x int. Did you at this time see any light or vessel coming towards you, so as to make a collision with the propeller Ottawa possible?

Answer. Yes. No, not before the collision; they were all around us, carrying bright lights, but were some distance off, though.

282d x int. Do you mean to be understood that before the collision, and while you were at the wheel with Brusseau, you saw no light approaching you that would make a collision with the propeller Ottawa possible?

325 Answer. No, not just then; I did not see any one; those that I saw were away head of us; they did not touch us.

283d x int. As you stood at the pilot-house, would you not have seen any vessel approaching you with a bright light, if it had been only three hundred or four hundred yards off?

Answer. Well, I might have seen them if I had been on the look-out; I was not looking out much for vessels.

284th x int. What was you doing?

Answer. Steering.

285th x int. Did it require all your ability to steer; and if so, why?

Answer. It did require the whole of it at the time; she was running around a good deal when I took the wheel; I was trying to get her steady.

286th x int. What do you mean by "she was running around, and I was trying to get her steady"?

Answer. She would take a sheer off one way and then the other; she would not keep her course.

287th x int. How was the wind at that time; in what direction

326 was it?

Answer. I believe the wind was from the south.

288th x int. How did it strike the propeller?

Answer. It struck it on the larboard side.

289th x int. It would be abaft of the beam, would it?

Answer. It would be about sideways.

290th x int. When you went into the pilot-house, which side of the wheel did you stand on, the larboard or starboard side?

Answer. The larboard side.

291st x int. On which side of the pilot-house is the pilot-house door, on the larboard or starboard side?

Answer. On the starboard side.

292d x int. Was the bright light that day on the pilot-house floor abaft the door, or forward of the wheel?

Answer. It was aft the wheel, and a little aft the door.

293d x int. How long was it before they called you to go into the pilot-house, that you looked out of the door to see if it was cloudy?

327 Answer. As near as I can recollect, it was about half an hour, it might be a little longer or shorter.

294th x int. How long was it after you lit your light that you looked out?

Answer. It wasn't but a short time, five or ten minutes.

295th x int. At no time before the collision did you see the schooner, or light of the schooner that struck you?

Answer. No, sir; I didn't see it.

296th x int. At the time the collision occurred, did you know it was a vessel that struck you?

Answer. No, sir.

297th x int. From the time you took a hold of the wheel before the collision to assist Brusseau, did he have hold with both of his hands; and did you have hold with both of your hands?

Answer. Both of us had hold with both of our hands.

298th x int. How long had you been in your state-room before you lit your light?

Answer. I was not there a great while; maybe a half hour, maybe an hour, I could not say for certain.

328 299th x int. How long was it before your watch commenced that you were called to the wheel?

Answer. Well, I guess it was about a half an hour, as near as I could come to it; it might have been longer or shorter.

300th x int. When you went out forward to look and ascertain whether the propeller lights were lit, and you found they were not so lit, did you look out into the lake to see whether there was any danger of collision from vessels?

Answer. No, I did not look out.

301st x int. Had the propeller during that evening any look-out, and if so, who was the look-out; and where was he stationed?

Answer. I did not see any look-out; I could not see any one from my room.

302d x int. When you went on to the deck from your room, did you see any?

Answer. No.

303d x int. From the time you went to the wheel with Brusseau, till twelve o'clock, did you see any one on the look-out?

Answer. Yes, sir.

329 304th x int. Whom did you see, and when did you first see him; and where was he stationed?

Answer. I saw the mate and captain both; I seen the mate after the collision in the pilot-house; the captain was around in and out of the pilot-house; when I first saw the captain he was on the top of the pilot-house, after the collision.

305th x int. When did the captain first come into the pilot house?

Answer. I don't recollect exactly when.

306th x int. How soon after the collision occurred was it, or was it at the time of the collision?

Answer. It was after the collision; I could not say how soon; I could no say exactly; I had no watch; it might have been two hours after; the mate came to the pilot-house a few minutes after the collision.

307th x int. When the mate came to the pilot-house, who was at the pilot-house with you?

Answer. Richard Brusseau.

308th x int. What did the mate say to you, and what did he say to Richard Brusseau, at that time?

330 Answer. He told me to look out for myself; I don't what he said to Richard Brusseau; I suppose he said this to both of us; meant it for both of us.

309th x int. What else did he say?

Answer. I cannot think of anything else.

310th x int. What did you say to him, and what did Richard Brusseau say to him?

Answer. I don't know that I or he said anything to him; I suppose we said something to him, but I don't recollect.

311th x int. How long did he, the mate, remain at the pilot-house with you at this time?

Answer. Well, I can't recollect how long; he was there off and on all the time I was there; he was not there all the time; he did not sleep much that night.

312th x int. What did you understand him to mean by the expression that he addressed to you, that you had better look out for yourself?

Answer. I don't know whether he meant for me to look out for the boat or for myself.

313th x int. At the time the mate came into the pilot-house directly
331 after the collision, and the first time he came in, as I understand you, after the collision, was the bright light sitting in the pilot house?

Answer. Well, I dont know whether it was there then or not; yes, it was there when the mate first came in and blowed the whistle.

314th x int. Was it so placed that when the mate came in to blow the whistle he could have seen it?

Answer. Yes, if he had looked down he could have seen it; the first grab he made when he came in was the whistle, and that was up high.

315th x int. With you and Brusseau in the pilot-house, both standing aft the wheel, and with the bright light sitting a little aft the wheel, as you stated, would not the bright light have been in his way?

Answer. Well, the wheel is forward of the door, and there is plenty of room aft the door; there is plenty of room aft the door; it would not have been in his road; the pilot-house is large; the wheel is a little forward of the centre of the door.

316th x int. Was there any other light except the bright light in the pilot-house; and if so, was it burning?

332 Answer. There was one other light there—the binnacle light; it was burning.

317th x int. When the collision occurred, did not both you and the other man at the wheel both run out to see what was the matter; if yea, how long were you gone?

Answer. No, sir.

318th x int. Did Brusseau?

Answer. No, sir.

319th x int. Was he then at the wheel also when the mate came in and blew the whistle, and told you to look out for yourself?

Answer. Yes, sir; he left the wheel just after the mate came, about five minutes after.

Answer. The larboard side.

291st x int. On which side of the pilot-house is the pilot-house door, on the larboard or starboard side?

Answer. On the starboard side.

292d x int. Was the bright light that day on the pilot-house floor abaft the door, or forward of the wheel?

Answer. It was aft the wheel, and a little aft the door.

293d x int. How long was it before they called you to go into the pilot-house, that you looked out of the door to see if it was cloudy?

327 Answer. As near as I can recollect, it was about half an hour, it might be a little longer or shorter.

294th x int. How long was it after you lit your light that you looked out?

Answer. It wasn't but a short time, five or ten minutes.

295th x int. At no time before the collision did you see the schooner, or light of the schooner that struck you?

Answer. No, sir; I didn't see it.

296th x int. At the time the collision occurred, did you know it was a vessel that struck you?

Answer. No, sir.

297th x int. From the time you took a hold of the wheel before the collision to assist Brusseau, did he have hold with both of his hands; and did you have hold with both of your hands?

Answer. Both of us had hold with both of our hands.

298th x int. How long had you been in your state-room before you lit your light?

Answer. I was not there a great while; maybe a half hour, maybe an hour, I could not say for certain.

328 299th x int. How long was it before your watch commenced that you were called to the wheel?

Answer. Well, I guess it was about a half an hour, as near as I could come to it; it might have been longer or shorter.

300th x int. When you went out forward to look and ascertain whether the propeller lights were lit, and you found they were not so lit, did you look out into the lake to see whether there was any danger of collision from vessels?

Answer. No, I did not look out.

301st x int. Had the propeller during that evening any look-out, and if so, who was the look-out; and where was he stationed?

Answer. I did not see any look-out; I could not see any one from my room.

302d x int. When you went on to the deck from your room, did you see any?

Answer. No.

303d x int. From the time you went to the wheel with Brusseau, till twelve o'clock, did you see any one on the look-out?

Answer. Yes, sir.

329 304th x int. Whom did you see, and when did you first see him; and where was he stationed?

Answer. I saw the mate and captain both; I seen the mate after the collision in the pilot-house; the captain was around in and out of the pilot-house; when I first saw the captain he was on the top of the pilot-house, after the collision.

305th x int. When did the captain first come into the pilot house?

Answer. I don't recollect exactly when.

306th x int. How soon after the collision occurred was it, or was it at the time of the collision?

Answer. It was after the collision; I could not say how soon; I could no say exactly; I had no watch; it might have been two hours after; the mate came to the pilot-house a few minutes after the collision.

307th x int. When the mate came to the pilot-house, who was at the pilot-house with you?

Answer. Richard Brusseau.

308th x int. What did the mate say to you, and what did he say to Richard Brusseau, at that time?

330 Answer. He told me to look out for myself; I don't what he said to Richard Brusseau; I suppose he said this to both of us; meant it for both of us.

309th x int. What else did he say?

Answer. I cannot think of anything else.

310th x int. What did you say to him, and what did Richard Brusseau say to him?

Answer. I don't know that I or he said anything to him; I suppose we said something to him, but I don't recollect.

311th x int. How long did he, the mate, remain at the pilot-house with you at this time?

Answer. Well, I can't recollect how long; he was there off and on all the time I was there; he was not there all the time; he did not sleep much that night.

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Answer. I don't know whether he meant for me to look out for the boat or for myself.

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331 after the collision, and the first time he came in, as I understand you, after the collision, was the bright light sitting in the pilot house?

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315th x int. With you and Brusseau in the pilot-house, both standing aft the wheel, and with the bright light sitting a little aft the wheel, as you stated, would not the bright light have been in his way?

Answer. Well, the wheel is forward of the door, and there is plenty of room aft the door; there is plenty of room aft the door; it would not have been in his road; the pilot-house is large; the wheel is a little forward of the centre of the door.

316th x int. Was there any other light except the bright light in the pilot-house; and if so, was it burning?

332 Answer. There was one other light there—the binnacle light; it was burning.

317th x int. When the collision occurred, did not both you and the other man at the wheel both run out to see what was the matter; if yea, how long were you gone?

Answer. No, sir.

318th x int. Did Brusseau?

Answer. No, sir.

319th x int. Was he then at the wheel also when the mate came in and blew the whistle, and told you to look out for yourself?

Answer. Yes, sir; he left the wheel just after the mate came, about five minutes after.

320th x int. How soon did Brusseau return after he left?

Answer. Well, as near as I can state, about half an hour.

321st x int. At the time the mate came in after the collision, and told you both to look out for yourselves; did you not know that a collision had occurred?

Answer. Well, I knew there was something was up; but whether it was the boilers blown up, or the smoke-stack fallen down, I did not know; I was a little frightened, too.

333 322d x int. Did either you or Brusseau ask the mate what had happened?

Answer. Well, I don't know but what Brusseau did ask him what had happened, can't be sure, and I don't know what answer the mate gave him.

323d x int. Brusseau's watch would have been up shortly after the collision occurred, wouldn't it?

Answer. Yes, sir.

324th x int. You say he left about five minutes after the mate came and blew the whistle and did not come back for half an hour, what did he go for, do you know?

Answer. He went to see what was the matter.

325th x int. How do you know that he went to see what was the matter

Answer. He told me when he came back what was the matter; that is the reason I know he went for nothing else.

326th x int. Did you not say, in your direct examination, that as soon as the collision occurred you thought the engine had bursted, and the man at the wheel ran out to see what was the matter?

334 Answer. He ran out as soon as the mate got there. It was only a few minutes after.

327th x int. Did the mate stay there till he returned?

Answer. Yes, sir.

Examination adjourned at five o'clock p. m., May 29th, till 10 a. m., May 30th, 1862.

328th x int. Was the mate the first one that came into the pilot-house after the collison occurred; if so, how soon did he come into the pilot-house after the collision occurred?

Answer. He was. It was not over a minute or two after the collision; a very short time.

329th x int. Did he remain in there till Brusseau left?

Answer. Yes.

330th x int Did any one come into the pilot-house during that time; if so, who came in? I mean the time from the time the mate came in after the collision till Brusseau left.

Answer. No, sir. No one came in.

331st x int. How long did the mate remain in the pilot house after Brusseau left?

335 Answer. He remained there till Brusseau came back.

332d x int. From the time Brusseau left, after the mate came in, after the collision, till he returned, did any one come into the pilot-house?

Answer. No, sir.

333d x int. During all that time was the pilot-house door open or shut?

Answer. It was open.

334th x int. Was any one else, during that time, at or near the pilot-house, that you saw? If so, state who.

Answer. No. I did not see any one, except the mate with me in the pilot-house.

335th x int. Could any one, during the time Brusseau left till he returned, have come to the pilot-house door without you seeing him?

Answer. Yes, sir.

336th x int. Who was the first person after the collision that you saw on deck?

Answer. The mate, George Baldwin is his name.

336 337th x int. Whom next did you see; and how soon after the collision occurred did you see him?

Answer. I saw the deck hands running around about ten or fifteen minutes after the collision.

338th x int. When did you first see the captain; and if you saw him, where?

Answer. It was a good while after the collision I saw the captain; I saw him there by the pilot-house door, and forward of the boat, walking around.

339th x int. How is the watch on board of the Ottawa divided, between the mate and master; have they separate watches, and what are they called, and when they do commence?

Answer. They do sometimes have separate watches; they are called the larboard and starboard watches. When they commence depends on when they leave port.

340th x int. Who keeps the starboard watch, and who keeps the larboard watch?

Answer. Sometimes the mate, and sometimes the captain; there is no certain watch for them; they are shifted around.

341st x int. Who kept your watch, the captain or the mate, that night?

337 Answer. The captain.

342d x int. When the captain keeps the watch, does he stand on the look-out?

Answer. He ought to. Yes, he does; but he did not that night. If there had been any one on the look-out this would not have happened.

343d x int. Who kept the look-out for him during the watch?

Answer. Nobody, that I know of.

344th x int. Was this the only occasion you know of, on board the propeller Ottawa, when the captain's watch was on, that the captain did not stand on the look-out, or some one for him, to keep it for him?

Answer. I don't understand the question. (Here the commissioner explains it.) The captain was most generally back and forward there, till this night; sometimes he is in the pilot-house and walks fore and aft, around, and sometimes in the pilot-house; he might have been there before I came to the wheel; he was not there when I did come this night.

345th x int. The first time that you saw the master of the propeller, after the collision—and had any conversation with him at all—did he ask

338 you any questions concerning the *the* collision; and he say anything about the collision; was anything said about you being at the wheel; and was any questions asked as to how the collision occured? State fully.

Answer. He did not ask me any questions concerning the collision, that I recollect; there was nothing said about my being at the wheel, that I recollect; he did not ask me any questions as to how the collision occurred.

346th x int. You say that the Frenchman, Aleck, called you up before the collision, and stated that Brusseau wanted you at the wheel. Did you have any conversation with Aleck since the collision, about the collision, about his calling you to go to the wheel? and if yea, state what those conversations were.

Answer. No, sir; I don't know that I had any conversation with him.

347th x int. Had you any conversation with him or the Dutchman about the lights, since the collision? If you did, state where the conversations were had, who was present, and what was said.

Answer. I don't mind of having any conversations with any one on the boat till we got here to Chicago; I had none with them at all.

339 348th x int. Have you heard from Aleck since the collision? If you have, state to us where he is and where he is likely to be found.

Answer. No, sir. Yes, I have heard from him; he is in the fifteenth Michigan; some one told me so; I don't know who.

349th x int. Did you tell Mr. Proudfoot where he was; if so, when did you so tell him?

Answer. No, I don't believe I did.

350th x int. Did you tell Mr. Proudfoot that you heard where he was; and did you him where that place was that you heard he was?

Answer. No, sir.

351st x int. You state, sir, that you had an interview with Mr. Rae and Dexter, on board of the propeller Ottawa? State who proposed the propeller Ottawa as a place of meeting, you or they.

Answer. It was me; they asked me where I would meet them in the morning, and I told them at Ryerson's office, or the propeller Ottawa.

352d x int. Where did you see Mr. Rae for the first time, and when?

Answer. At Mr. McRae's boarding-house, where I board; at nine

340 o'clock on last Sunday evening.

353d x int. When did you see Mr. Proudfoot first, after seeing Mr. Rae? and if you saw him before—

(Question withdrawn for the present.)

353d x int. What conversation occurred between you and Mr. Rae, when Mr. Rae arrived at your boarding-house? If any, state what.

Answer. Well, he asked me to go out and take a walk. I believe that was all in the house.

354th x int. What was the first question Mr. Rae asked you after you got into the street?

Answer. I believe he asked me if I knew anything about the propeller, if I was on it; I believe that was the first.

355th x int. Did he ask you what you could prove; and did you not, at first, decline to say; and did you not state to him that you did not desire to be mixed up with the case? and state what you did say.

Answer. He did ask me what I could prove; I did not like to tell him, didn't care about telling him what I could prove; I told him I did not care about having anything to do with the case; I think so yet.

356th x int. Did he not say, as you told the other side all about it, and was going to be a witness for them, you ought, in all fairness, to tell

341 the propeller's owner all about it too?

Answer. I don't know whether he mentioned anything about that or not; he might have said so, and I can't remember whether he did or not; I don't want to lie about it; I want to get as near the truth as I can.

357th x int. Did he not say to you that all Mr. Ryerson could do was to go to his own crew to get the facts, and they ought to tell him; and that no good man would desert his own *his own* vessel and go on the other side and then refuse to tell the owner of his own vessel what he could prove; and did you not say in reply that you had already sent up to the captain a man to tell him what you could prove, and the captain said you were only a deck hand, and treated the matter with contempt, or words to that effect?

Answer. He did tell me that all Mr. Ryerson could do was to go to his own crew to get the facts, and I ought to tell him; I told him I would tell the truth. He did tell me that no good man would desert his own vessel and go on the other side, and then refuse to tell the owner of his vessel what he could prove. I did say in reply that I had already sent a man up to the captain to tell him what I could prove, and the captain said I was only a deck hand, and treated the matter with contempt.

358th x int. Did you not state, also, that when you sent that man to the captain you sent word by him that the best thing for the propeller
342 was that you should keep out of the way, and that he paid no sort of attention to it?

Answer. No, I don't believe I told him that.

359th x int. Are you sure that he did not say so?

Answer. I am sure I did not tell that man so, that I sent to the captain; I don't believe I told Rae that; I can't remember whether I did or not.

360th x int. Did not Mr. Rae then ask you if what you were going to prove was about the lights; and did not you reply yes, it was about the lights; and did not Mr. Rae then say, come and tell us what you can to help us; and did you not reply, oh, God, it is pretty bad; the best thing for me to do to help you is for me to go away?

Answer. He did ask me if what I was going to prove was about the lights; I told him they were not burning; I did reply, yes, it was about the lights; Mr. Rae then did say, come and tell us what you can, and help us. (The question changed to what you can to help us.) I don't know whether he said and help us, or to help us. I don't mind about my saying, "Oh, God;" I said I had to tell the truth. Well, I don't know that I said, "it is pretty bad; the best thing for me to do to help you is for me to go away," at that time. No, I don't think I did.

343 361st x int. Did you not state "the best thing for me to do is to leave, it is pretty bad;" and did not Mr. Rae reply, we would rather you would stay and tell all you know; and you replied, oh no! if I stay, I will have to tell the truth, and I had better leave?

Answer. I did, along through the evening, say that the best thing for me to do is to leave, that it is pretty bad; Mr. Rae did reply we would rather you would stay and tell the truth; I told him I would have to tell the truth; I did not tell him anything about leaving.

Examination adjourned at twelve o'clock m. till three o'clock p. m., May 30th, 1862.

362d x int. Did he not state to you during that conversation, and before he met Mr. Dexter, that he could neither offer you money to go away, or to swear falsely; that it would be neither honest nor honorable so to do, and that he was a gentleman and an officer of the court?

Answer. I don't know that he said all of that. He said he could not or would not offer me any money.

363d x int. Didn't he say something like what is asked in the last question?

Answer. He said so much, I don't remember what he said. He might have said what he has repeated. I don't want to say—I can't re-
344 member.

364th x int. When you met Mr. Dexter on that evening at the Lake House, what did you say to him?

Answer. I can't remember that I said anything; I may have said something.

Cross-examination continued by Mr. Dexter.

365th x int. Was not the conversation commenced by Mr. Rae asking you to state your propositions to me, and did you not then go on to say that if money was furnished, you would leave the city and not give your testimony; and if so, was not this a voluntary statement on your part, without any previous conversation from me?

Answer. It (the conversation) was not so commenced when we first met at the Lake House. When Mr. Dexter came along, Mr. Rae stopped him, and told him I had some very important news, or that I was an important

witness, or something of that kind; and then Mr. Rae called Mr. Dexter around the Lake House, and was talking there about ten minutes before they came back there where I was. I did not say at the Lake House if money was furnished me I would leave the city and would not give testimony.

366th x int. If not at the Lake House, where did you say so on that evening?

345 Answer. I did not say so until after they asked me what it would cost me to leave town; that was walking up Rush street.

367th x int. You said that you wished to leave on the morning train for Minnesota, and asked me how early the money could be had, and then, for the first time, banks were mentioned, and I said that they did not open till ten o'clock; is not this the fact? answer explicitly.

Answer. I told him if I could get away in the morning train I would go, and he asked me what time it started. I did not ask him how early the money could be had. I do not know whether this was the first time banks were mentioned or not. I would not say for certain whether he said the bank would not open till ten o'clock or not.

368th x int. You have sworn that you wished to avoid lawyers and people from the other side—that is, the side opposed to Mr. Proudfoot; will you please explain why you wished to avoid them, and why you were not as willing to tell them what you knew about the case as you were to tell Mr. Proudfoot?

Answer. I was a witness on the other side. Mr. Proudfoot told me to have as little to say to them as possible, but if I could get any money, to take it.

369th x int. When was the first time that Mr. Proudfoot inculcated this beautiful morality to you?

346 Answer. I don't mind whether it was Friday or Saturday.

370th x int. Up to that time, had any one intimated to you that you could get money for refusing to testify, or for falsely testifying in this case?

Answer. No.

371st x int. Then, up to that time, you had no reason to suspect that any one would offer you money in connexion with this case, and you had not expressed any such suspicion to Mr. Proudfoot, had you?

Answer. No.

372d x int. Have you not sworn that you offered to take three hundred dollars and leave the city and not testify in this case?

Answer. Yes; but they said it was too steep; that Ryerson was a poor man.

373d x int. When you so offered to go, did you intend to go?

Answer. No, sir.

374th x int. Then you were lying, were you not, when you made that offer?

Answer. Yes.

347 375th x int. Was it your only object, in so lying, to get the money, as instructed by Mr. Proudfoot?

Answer. Yes. He told me they could not take it away from me, if I could get it.

376th x int. On Sunday evening, when you offered to leave the city, did you intend to go?

Answer. No, sir-ee.

377th x int. You were lying then also, were you not?

Answer. I was lying, but I done very near as I was told. I stretched it a little.

378th x int. Told by whom do you mean?

Answer. Mr. Proudfoot.

379th x int. Had you any other reason than the instructions of Mr. Proudfoot for not wishing to see the lawyers or the people on the other side, such as hostility to Mr. Ryerson or Captain Warren? If so, state fully what.

Answer. I had no other reason than what Mr. Proudfoot told me. Mr. Proudfoot told me not to have much to do with them, or not to go away and drink with them. I had no spite or hostility against Ryerson or Cap-
348 tain Warren. I had better times on board of that boat than on any other boat; and they never abused me in any way.

380th x int. You say that when you changed your boarding-house to Wells street, your board was paid there for three days; state who paid it.

Answer. I worked hard for the money I paid for it; so, I suppose, it was my money that paid for it.

381st x int. Did you not expect Mr. Proudfoot or Mr. Stewart to pay it?

Answer. No, sir.

382d x int. Was it your arrangement with them that you should pay your own board, however often you changed, and they pay you one dollar and fifty cents a day?

Answer. I never made a bargain of anything of the kind; there was nothing said about board.

383d x int. Have you not sworn that you were to receive one fifty per day, and did you not state to Mr. Rae and myself on board of the Ottowa, that you were to receive that sum per day until you could find certain witnesses, and that you thought that would take most of the summer?

Answer. No, I did not say that I would get that much till they
349 found the other witnesses; but I told him it would take about all summer to find the other witnesses.

384th x int. Did you not say you were to get that sum per day until the other witnesses were found?

Answer. No, sir.

385th x int. State what you did say about it in regard to the length of time you expected to receive that amount per day?

Answer. I told them I did not know how long I would receive it; and I don't know yet how long.

186th x int. On your arrival at Chicago, on the Ottawa, after the collision, did not Captain Warner, of the Ottawa, discharge you, and did he not then and there tell you that he discharged you for drunkeness, and did you not leave threatening to be avenged on him?

Answer. No; he is a damn liar if he says so; he begged me to stay, and coaxed me; I told him at the time, I was not able to handle lumber; he told me I need not handle lumber only when I was able; I told him I would rather stay on shore till I was straightend up; I never was discharged off of any boat or propeller yet.

387th x int. After you left the Ottawa and went on board of the
350 propeller C. Mears, did you not steal a pair of gloves from a passenger and hide them in a bed?

Answer. No, sir; I never stole a pair of gloves in my life.

388th x int. What did occur about a pair of gloves, when you were on the Mears?

Answer. A man by the name of William Tibbets stole them; he is now in Washington; I gave him six bits for them; there is lots in town that know that too.

389th x int. When you heard they were looking for them, did you not hide them in a bed or some other place? if so, state all about it?

Answer. No, I had nothing to do with them.

390th x int. Were they not found in your keeping, and did you not have to give them up?

Answer. No, sir; anything I buy I will not give up; they were not found in my keeping either; they were not taken at the time he alludes to; they were taken a year before I went on board of her.

391st x int. State in whose possession they were found, and how you know Tibbets stole them?

351 Answer. They were found in Tibbets's bed; he told me himself he stole them.

292nd x int. Did he tell you that before or after you bought them?

Answer. He told me after I bought them.

Examination adjourned at five o'clock p. m., May 30th, till ten o'clock a. m., 31st.

393rd x int. When the gloves were found in Tibbets's bed were you on board of the boat, and did you know of it at the time?

Answer. Yes, I was on board of the boat; I did not know they were found there at the time.

394th x int. When did you first know of it and how long after they were found?

Answer. About two or three days after they were found.

395th x int. When did you buy the gloves?

Answer. About three years ago; I bought them before they were found; he told me he had a good pair of gloves to sell; I told him if they were good I would give him six bits for them.

396th x int. Well, did you make the trade at that time?

Answer. Yes, I made the trade.

352 397th x int. If you bought the gloves, how came they in Tibbets's bed?

Answer. I bought them from Tibbets.

398th x int. You say you bought the gloves from Tibbets before they were found in his bed, explain how your gloves came to be hid in his bed?

Answer. He had not given them to me yet; nobody found the gloves there but himself, when he went to give them to me; I did not know that them were the gloves that he was going to give me.

399th x int. Then you bought a pair of gloves of Tibbets, did you, without seeing them?

Answer. Yes.

400th x int. How came any stir to be made on board about the gloves, and when was it commenced?

Answer. I don't mind of hearing any stir on the boat about the gloves; I heard more about it here than I did there.

401st x int. Don't you know that a passenger to whom they belonged looked all over the boat for them, and got the officers to do the same?

Answer. I don't know anything of the kind.

353 (Here Mr. Rae cross-examined the witness.)

402nd x int. Jim, as soon as you got into the cabin of the propeller Ottawa, with Mr. McRea and myself, did not McRea say to you, "Jim, now, state to me what you mean; I want you only to tell the truth?"

Answer. I can't say whether I heard that or not; you might have said so; but I cannot remember; I don't want to say yes or no, for fear of telling a lie; I want to come as near the truth as I can.

403d x int. Did you not say in reply to whatever I said to you at the time, on board of the propeller Ottawa, on last Monday morning, at eleven o'clock, "God damn it, the best thing for me is to leave town, in the first train," or words to that effect?

Answer. Well, yes; I said several times it was best for me to leave town than to stay and appear against him.

404th x int. Did you not at time say also, "in the first train?"

Answer. Yes.

405th x int. Did not Mr. Rae state to you that this was the proposition you made last night, which first came from you, and did you not reply, yes, and that that Mr. Rae replied to it last night when so made by you,
354 "Jim, that would be wrong," that he was an officer of the court and could not advise a witness to leave or swear falsely, or words to that effect?

Answer. I did say, yes; this was the proposition I made last night, which came first from me; and that Mr. Rae did reply to it last night so made me, Jim, that would be wrong, that he was an officer of the court and could not advise a witness to leave or swear falsely.

406th x int. Did not Mr. Rae say at that time that all he wanted you to do was to speak the truth, and that you replied you would not swear falsely for all the money in the city, and that the only way for you was to leave town—to skedaddle?

Answer. Yes.

407th x int. When on Sunday evening, at Mr. McRae's boarding-house, when Mr. Dexter and Mr. Rae were about bidding you good night, and it had been arranged that you were to meet on the Ottawa, did you not say that you had an appointment with Mr. Proudfoot at half-past eight or nine o'clock on Monday morning; that you would not see Mr. Proudfoot, but keep out of the way, and that Mr. Rae told you that would be wrong, if you made any appointment with Mr. Proudfoot, that he was a gentleman, and you ought to keep it and see him; but that you might get your case put
355 off till Tuesday afternoon, or words to that effect?

Answer. I did not say at that time that I had an appointment with Mr. Proudfoot for the next morning; but I said he had left his card, and showed it to you, and that Proudfoot wanted to see me; I did say that I would not see Mr. Proudfoot, but keep out of the way; I had not promised to see him; I think Mr. McRae told me that Proudfoot was a gentleman, and that I ought to do as I had promised; I told him I had not promised; that he had only left his card; I don't mind of hearing Mr. Rae say that I might get my case put off till Tuesday afternoon.

408th x int. Are you sure it was Mr. McRae that said it?

Answer. I am sure he said so; Mr. Rae might have said so; there were two or three talking to me at once; they were bothering me.

409th x int. Did you see Mr. Proudfoot the next morning, and before you went to meet Mr. Rae and Mr. Dexter, on the Ottawa?

Answer. No, sir.

410th x int. Did you see him at all before going on board of the Ottawa, after you left us that night, if so, when and where?

Answer. I did not see him.

356 411th x int. When on board of the Ottawa last Monday morning, about eleven o'clock, and in conversation with Mr. Rae, did you not say that you wanted to go to Minnesota; that you had a brother or relatives there; and that you would require some new clothes; and that you would lose your summer, and perhaps your winter, work; and that you would have to change your name?

Answer. I said if I would leave town I supposed Minnesota would be my best place to go, and that I had a brother or relatives there. I did say I would require some new clothes; I did say that I would lose my summer and perhaps my winter work. I said I would have to change my name if I came back to town. It would be a pretty hard matter to change my name in this town, after living here twenty years.

412th x int. Did you not say if you went it would be all right with the

other witnesses, meaning "Aleck," the Frenchman, that was in the 15th Michigan; that you had not told Mr. Proudfoot anything about him, and that he would not know, or words to that effect?

Answer. I did say if I went it would be all right with the other witnesses, meaning "Aleck," the Frenchman, that was in the 15th Michigan. I believe the poor bugger is shot by this time. (The last sentence the witness says was not meant a part of his answer, but said it aside
357 the proctor, for the respondent wished it put down.) I did say that I had not told Mr. Proudfoot anything about Aleck. I did not say that he would not know. He might find out about him from some one else.

413th x int. Did not Mr. Rae ask you the name of the witness, and did you not say that you had not told Mr. Proudfoot all you knew, and that you would not tell Mr. Rae, but that it was very bad for the propeller?

Answer. Mr. Rae did ask me the name of the witness. I would not be certain that I said that I had not told Mr. Proudfoot all I knew, but I did tell him all I knew. I don't know whether I said I would not tell Mr. Rae; I told him it was a bad job on the propeller. I can't recollect every word that was said.

414th x int. Did you not say at this time, on the propeller, that Captain Warren, of the propeller, had acted very strangely with a woman passenger, and you guessed that that had something to do with the collision, but you would not say, or words to that effect?

Answer. I did not say that he acted any way strange with her. I saw him talking with her several times, and sitting on the lounge with her. I believe I did say that I guessed that that had something to do with the collision, and I think it had.

415 x int. What had it to do with the collision? and state the grounds of your belief.

358 Answer. I don't know what it had to do with it. I suppose he was just as apt to be around with the woman at the time of the collision as at any other time. I don't know any other reason than I have told you; that is as near as I can tell you. I can't explain myself as well as a great many, if I could, there would not be so much contradicting.

416th x int. Did not Mr. Rae state to you, on board the propeller that morning, now, Jim, be easy on Mr. Ryerson; he is a poor man, and for God's sake tell the truth; and did you not reply that it was the truth, and you could not tell anything else?

Answer. Yes; I told him I could tell nothing but the truth.

417th x int. About this time Mr. Dexter came in, did he not?

Answer. Yes, sir.

418th x int. What did Mr. Dexter say to you?

Answer. I don't recollect exactly what he said.

419th x int. Did you not say to Mr. Dexter, after you had talked some time with him, and on board of the propeller Ottawa at this time, I want to leave town, if I had the money; if you have anything to pay me, I
359 want it to keep me all summer, because I will lose my work. And did not Mr. Rae say, how soon can we get the Frenchman, in the Michigan regiment, on the Potomac? And did not you say that the other side would keep you till you found him, at a dollar and a half a day?

Answer. I told Mr. Dexter if I was going to leave I wanted to get in the one o'clock train. I did not anything about if I had the money. Mr. Rae did ask me how soon we can get the Frenchmen, in the Michigan regiment, on the Potomac. I did not say that the other side would keep me till I found him, at a dollar and a half a day.

420th x int. Did not Mr. Rae say, in that connection, "how much money do you want, Jim?" And did you not say that $300 would not be too much, and that the other side, at one dollar and a half, would pay me more than that?

Answer. Mr. Rae did say, how much money do you want, Jim? I said three hundred dollars. He asked me how much it would cost. That is the words. I did not say that the other side, at one dollar and a half a day, would pay me more than that.

421st x int. Did you, at no time during that conversation, say that the other side, at a dollar and a half a day, would pay you more than that, or words to that effect?

360 Answer. No, sir; I never said anything of the kind. I did not know how long they would keep me at that rate, and I don't know.

The examination was here adjourned, at 12 o'clock m., till 2 o'clock p. m., May 31st, 1862.

422d x int. When you said $300 would not be too much, did not Mr McRae say that $250 would be about right, or words to that effect?

Answer. Yes, sir.

423d x int. Did not Mr. Rae say: "Jim, I want you to say only what is right?" I do not want you to leave town. I only want you to tell the truth; or words to that effect?

Answer. I don't mind of him saying anything of the kind at the time.

424th x int. At this time did not Captain Warren, of the Ottawa, come in?

Answer. Yes, sir.

425th x int. Did not Mr. Rae say to Captain Warren: Captain, you have not behaved well in not telling your employer everything; if what Jim says is true, you ought to be discharged. Jim tell the captain what you will testify to?

361 Answer. Yes.

426th x int. Did you tell him?

Answer. I told him there were no lights burning; and he said it was a damn lie. Mr. Rae told the captain that I offered to leave town for three hundred dollars. The captain said he would not give me five cents, not a damn cent; it was all a damn lie; and I walked out.

427th x int. Did not Mr. Rae say, Jim, I can't give you anything, but you go and testify this afternoon, and tell the whole truth; if you have any religion, pray that you may tell the truth; and if you do swear falsely, you will never have any luck; or words to that effect?

Answer. I don't mind of their saying anything. They went out into the lady's cabin; and when I saw I could not make anything out of them I thought I would start. I believe that was the last of our conversation.

428th x int. Did you not say, just as you were going, that you would go up to the rolling mill and get the other witness, or see him and go to Mr. Proudfoot, or words to that effect?

Answer No, sir.

429th x int. Did not Mr. Dexter say at that time, well, Jim, you may threaten us as much as you please, you can't make anything.

362 Answer. No, sir.

430th x int. Have you, since you were sworn and during your examination here, held any conversation in regard to what you have sworn; and has any part of your testimony been read to you, or explained, during the recesses or adjournments? If yea, state by whom.

Answer. Of course, Mr. Proudfoot and I have been talking together; why wouldn't we? I believe no part of my testimony has been read or explained to me during the recesses by any one.

431st x int. What did Mr. Proudfoot say to you in those conversations?

Answer. Well, I cannot tell what he said; I did not take any notice of what he said. He says he thinks I tell the truth, and I know I do.

Redirect examination by Mr. Proudfoot.

1st redirect int. Have you stated all the conversations that took place on board the Ottawa between Mr. Rae, or Dexter and the captain, when he, the captain, came into the cabin? If not, state fully.

Answer. I have not stated quite all. When Mr. Dexter came in
363 he had a roll of bills in his hand, which he handed to Mr. Rae. As soon as the captain came into the cabin they commenced telling the captain that he had not done right by them, and that I had offered to leave town for $300; and they said the captain ought to be the losing man, or ought to pay the money they were going to give me for leaving. I believe that is all.

2d redirect int. Why did you leave the army and return to Chicago?

Answer. I was sick; I was taken with the diarrhœa. I wanted to come up, at any rate. I expected to come up as soon as the navigation opened, but I thought I would stay down, to see if I could not get into some little battle. I was not much able to walk when I got here.

3d redirect int. When you removed to Wells street, as you have testified, did you do so of your own accord, or by the advice of any one? If by the advice of any one, state by whose advice.

Answer. I moved by my own accord, no one advised me.

4th redirect int. Why did you return from Wells street to Mr. McRae's; and why are you still boarding there?

Answer. Because I had my board paid there a couple of months and better.

364 5th redirect int. State how it is that your board is paid there for a couple of months, and by whom it has been paid.

Answer. I gave them $10 the second day I come there, Sunday—it will be two weeks to-morrow—and then they were complaining of being hard up; that they had a hard winter, and asked me if I would not loan them $20. I said I would, and take it out in board; if not this summer, then, next winter. I paid it myself; nobody pays my board.

6th re. int. You state that a man called for you on Sunday afternoon, Mr. Stevens, and asked you go to the Dutch garden with him. Did you go or not, and did any other person from your boarding-house go with him?

Answer. I did not go. Mr. McRae and Mrs. McRae went with him.

7th re. int. Until the day on which you called with Mr. Proudfoot upon William Higgins, at the distillery, near the rolling-mills, had you met or had any conversation with him, Higgins, since you left Chicago last fall? If yea, state when and where such conversation took place, and what was said.

Answer. I had not seen him since I left here last fall till I met him with Mr. Proudfoot.

8th re. int. In answer to the seventy-fifth cross-interrogatory you
365 say you told Higgins you might make $200 or $300 before you got through with the scrape, if it went to Washington. What did you mean by this; why did you say so to him; how did you expect to make that sum; and did you ever have any promise made to you, either directly or indirectly, by Mr. Proudfoot or Mr. Stewart or any other person, of any benefit of any kind to accrue to you beyond the $1 50 per day, which you were informed you would receive while a witness in this case?

Answer. I try and meant to coax him down as a witness to tell what he knew about it. I did not like to be here all alone. Oh, God! I did not expect to make that sum. I never had any promise made to me by any one other than the $1 50 per day, which they said I would get as a witness fee.

9th re. int. Did you mean to be understood, in your answer to the 72d cross-interrogatory, that you did not go into the rolling-mill at all on that day?

Answer. Yes; I was in there, and looked all over it.

10th re. int. Were two men actually required at the wheel of the Ottawa on the evening of the collision, and had you been at the wheel at Brusseau's place, in the same kind of weather, would you have sent for him to assist you to manage the wheel?

Answer. No, sir.

366 11th re. int. Was Brusseau trusted alone at the wheel in very rough weather?

Answer. It was very seldom that I saw him alone in rough weather. Most generally, when I came in rough weather, I saw the captain or the mate standing there with him.

12th re. int. In order to reach the pilot-house from your room, how would you go?

Answer. I would go right around the pilot-house to get at the door; the pilot-house is attached to our room inside—a single board or partition between.

13th re. int. On which side of the boat is your room, and on which side is the door of the pilot-house?

Answer. My room is on the larboard side; the door of the pilot-house is on the starboard side.

14th re. int. Whose watch was, it on the evening of the collision, during the time of the collision, and what were his hours?

Answer. It was the captain's watch; his hours were from six to twelve.

15th re. int. Had not Brusseau as much authority to order you to light the lamps as you would have had to order him to do so?

Answer. Yes.

367 16th re. int. Where did the mate stand when he blew the whistle, at or about the time of the collision? Did he stand inside or outside of the pilot-house door?

Answer. He was not there at the time of the collision; after the collision he stood inside of the pilot house door; you might call it inside, he stood right there at the door.

17th re. int. You say that the bright light was taken out of the pilot-house about a half an hour after the collision. Do you mean that it was then taken out, or that you, then, for the first time after the collision, noticed that it was gone?

Answer. I looked down about a half an hour after the collision and it was gone. It might have been taken out before.

18th re. int. Is it the duty of the wheelsman, while in charge of the wheel, to keep a look-out for approaching vessels? And is it not difficult for the wheelsman to see distinctly outside on account of the glare of the binnacle light inside of the pilot-house?

Answer. It is not the duty of a wheelsman, while in charge of the wheel, to keep a look-out for vessels; the wheelsman cannot see very good; he cannot see no distance.

19th re. int. State, as nearly as you can, how long after the collision you

first saw the captain on deck, and forward, and by the wheel-house.

368 Was it ten minutes, half an hour, or two hours, or what length of time was it?

Answer. God! I have stated that about a dozen times. It was about two hours, as near as I can tell.

20th re. int. What kind of a door had you to your room; and did you close it when you left to go to the pilot-house?

Answer. I had a door with a window in it with a red curtain over the window. I did close it when I went to go to the pilot-house.

21st re. int. Did you leave your light burning when you so left your room?

Answer. Yes, sir.

22d re. int. How do you know that you had a red curtain hanging over the window?

Answer. Because I know it. I am sure of it.

23d re. int. State when Mr. Proudfoot first advised you to keep clear of the parties on the other side. Was it before or after the day on which you informed him that you had been followed to your boarding place, and that men had been there inquiring for you?

369 Answer. It was before they had been there, and after I had been followed to my boarding-house, but before they had been to the boarding-house.

24th re. di. int. Explain what you mean more fully.

Answer. I was followed over to the boarding-house the first day I was here. He told me not to have too much to do with those fellows, and not to go off and drink with those fellows, so that I would be so sick the next day that I could not come. He did not mention any names. That is as near as I can explain myself.

25th re. int. When you say the first day, do you mean the first day you were in the city? If not, what do you mean?

Answer. I mean the first day I was here in this office.

26th re. int. In the conversation I had with you in regard to any one on the other side attempting to influence your testimony, please state exactly what I said, if you can remember.

Answer. You told me if there was any money offered to me to take it, and you said they could not take it from me.

27th re. int. When I spoke to you in regard to taking any money from them, did I say anything to you about taking money, unless they should offer it to you for the purpose of influencing your testimony? State what I said upon that point.

370 Answer. He told me if they offered me money to take it; that is all he told me.

28th re. int. Did I name any one in particular who would be likely to offer you money or tamper with you; or did I speak generally of the parties on the other side?

Answer. You did not name no one in particular.

29th re. int. Did I not say that your testimony was very important, and that as these parties knew where you lived they might attempt to influence you in some way or other? And did I not say that you had better keep clear of them, and if they asked you to drink with them to avoid doing so? And did I not say that it might be they would go so far as to offer you money to leave town, in order that we might be deprived of your testimony in this case; and if offers of that kind were made to you by any one to take the money offered and put it in your pocket, and then let me know it?

(Objected to by proctors for respondent as leading and as giving the statements of the proctor who called him in evidence, and for the further reason that the witness has just now answered their question explicitly.)

Answer. Yes.

Re-cross-examination by Mr. Rae.

After you left the propeller Ottawa, on Monday, have you not
371 stated in the presence of Mr. McRae that you intended to swear so that you would do the propeller all the damage you could, or words to that effect?

Answer. No; I often told them I would like them to settle it, so that neither party would lose anything. I have nothing against the propeller, God knows.

JAMES WILLIAMS.

372 And the said Peter Mowat was by me, on the fourth day of September, A. D., 1862, first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid. I carefully examined the said Peter Mowat and he did thereupon depose and say as follows, to wit:

1st int. What is your name, age, occupation, and place of residence?

Answer. My name is Peter Mowat; my age is twenty-five; my occupation is sailor; am mate of the barque "Arabia;" I live in Kingston, Canada.

2d int. Do you know the parties in this suit? if so, how long have you known them?

Answer. I am slightly acquainted with Mr. Stewart for the last
373 three years. I know the propeller Ottawa, when I see her; I have never been aboard of her.

3d int. State where and how you were employed during the month of September, 1860?

Answer. I was on board the barque "Arabia," carrying grain to Port Colburn; I was the mate.

4th int. Where was the barque "Arabia" about the middle and latter part of that month?

Answer. The latter part of the month she was on her passage from Chicago to Port Colburn.

5th int. Will you state, as nearly as you can, the date of her departure from Chicago, how she was freighted, about what hour she left Chicago, and give the particulars of the voyage, so far as regards the wind or winds, and any incidents of the voyage?

Answer. I do not recollect, sir, the date of her departure from Chicago; she was freighted with wheat; I don't recollect about what hour she left Chicago; we had the wind southerly on Lake Michigan, a strong breeze, and southward and west on Lake Huron; and we came near being run into by a propeller on Lake Huron.

374 6th int. State where the "Arabia" was at the time you came near being run into by a propeller, and state about what hour of the day or night it was?

Answer. It was about half way between Middle Island and Thunder Bay light, about ten miles from land; it was about eight o'clock at night.

7th int. State what course your vessel was running, about what rate of speed, and which way was the wind?

Answer. Our vessel was running southeast by south, half south; between eight and ten miles an hour she was running; the wind was about west-southwest.

8th int. State if you had your proper signal light burning, and what hands were on deck at this hour you mentioned?

Answer. We had our proper light burning forward on the pall-bit; all the hands were on deck at this time.

9th int. State particulars as to how you came near being run into by a propeller and all the circumstances connected with the incident?

Answer. By the propeller not porting her wheel soon enough, in the first place, and by his lights going out or being put out of our sight; when his lights were hid, we could not see which way he was steering, and as soon as the lights went out, or were put out of our sight, they blowed
375 their whistle some three or four times. As soon as they commenced blowing their whistle I jumped on the windlass and showed our bright light some three or four times to avoid their running into us; when he was a little way off of us, on our starboard bow, he ported his wheel and crossed our bow that close that I could see the men run forward on their hurricane roof to get clear of our jib-boom; that is about all the statement I have got to make.

10th int. Did you have any notice before the whistle was blown of the approach of the propeller; if so, state what notice?

Answer. We saw her bright light before they commenced blowing their whistle, but that was the only light I could distinguish.

11th int. From the positions which the two vessels occupied at the time you saw the bright light, should you have been able to see any other light, if she had such; and if so, what light?

Answer. We should have seen her green light as well as the bright light.

12th int. You say when he was a little way off from you, on your starboard bow, he ported his wheel and crossed your bow, should you then have seen any other light than the bright light mentioned, if he had any
376 light, and what light should you have seen?

Answer. We should have seen his red light.

13th int. Do you mean us to understand then that the bright light was the only light you saw, and that the bright light went out some minutes before the vessels passed each other?

Answer. Yes, sir.

14th int. State how it happened that you passed so near each other and why did you not give sea-room?

Answer. By us not seeing his lights and him not porting his wheel soon enough.

15th int. State how long before the vessels passed each other the bright light of the propeller was lost to your sight?

Answer. From five to ten minutes.

16th int. State how you showed your lights when, as you say, you jumped up on the windlass, and why did you so show it; and was it not at that time burning in his proper place?

Answer. I showed our bright light some three or four times, so
377 that he would see it, for fear he would not see the red light; we had the red light burning at the time, but I showed the bright light because it can be seen further than the red light.

17th int. State how near the vessels were when they passed each other; and state if any conversation passed between any of the parties on either vessel while passing?

Answer. Our jib-boom passed over his quarter, and when I seen the propeller was clear of the vessel, I called him a green son-of-a-bitch, and asked him where he was going.

18th int. Was an injury done to the bark? If so, state what.

Answer. Nothing, sir.

19th int. You say this occurred about eight o'clock in the evening, do you mean to swear positively to that hour?

Answer. It was a little after that hour by our time, I can swear positively to that.

20th int. When you say by our time do you mean the clock on board of the "Arabia."

Answer. Yes, sir.

378 21st int. Do you know what propeller it was that passed you so?

Answer. I do not.

22d int. Did you pass that evening within sight of any other propeller than the one you have mentioned?

Answer. No, sir.

23d int. You have stated, in answer to the fifth interrogatory, that you do not recollect the date or the hour of the departure of the "Arabia" from Chicago on this voyage. State as nearly as you can about the time of the month; and did you leave in the morning, at noon, or in the evening of the day?

Answer. We left between the twelfth and fifteenth of the month, I should think. I do not recollect now the time of the day.

24th int. Did you make any stops between Chicago and the place where you say you passed the propeller?

Answer. No, sir.

25th int. How long would it take the "Arabia" to run with such wind or winds as you say you had on that voyage from Chicago to the point at which you met the propeller?

379 Answer. About three days, I should think.

26th int. Did you or not have the wind free from Chicago to that point, or could you not lay a course all the way?

Answer. We had the wind free and could lay our course all the way.

27th int. What is the distance from Chicago to that point?

Answer. About three hundred and eighty miles.

28th int. With the wind free, would it take three days to run that distance?

Answer. That depends upon how strong it blows.

29th int. How long would it take with the wind as it blew on this voyage?

Answer. About three days and three nights.

30th int. Are there any circumstances by which you now positively state, that the meeting of this propeller took place during this particular voyage? If so, state fully what those circumstances are.

Answer. We brought cord wood up to Chicago and Mr. Steward

380 bought it. During the time we were on our passage down, his vessel was run into and sunk.

31st int. Do you mean to be understood on the next return trip you bought cord wood and sold it to Mr. Steward?

Answer. Yes, sir.

32d int. How long a time were you on your return trip if you recollect, and if you cannot recollect this particular trip, what is the usual time from Port Colburn to Chicago?

Answer. I do not know how long we were coming up that time. As a general thing, vessels, or the "Arabia," come up in twelve or fourteen days.

33d int. Did you load up and return immediately?

Answer. We made no delay; we unloaded the grain at Port Colburn and came up to the St. Clair river and got our wood there.

34th int. Was this the only cargo of wood you sold in that fall to Mr. Steward?

Answer. I think that is all; the only cargo.

35th int. Can you state the date of your arrival at Chicago on this voyage?

Answer. I think it was about the eight or tenth of October.

Cross-examination by Mr. Dexter.

381 1st x int. Have you sailed on the "Arabia" since September, 1860? and if not, state on what vessels you have sailed.

Answer. I have been on board of her ever since the spring of 1860, during the summer season.

2d x int. Give the names of the captain and the crew of the "Arabia" in September, 1860, on the voyage down when you met the propeller you speak of.

Answer. The captain was William Calder; Thomas Howard, John Hurst William Millan, James Lesley, that is all I can recollect the names of.

3d x int. State where any of those men are at the present time, if you know, and how employed.

Answer. There are two of them on board of the vessel now. Thomas Howard and John Hurst and the same captain.

382 4th x int. You say you were sailing southeast by south half south when you met a propeller, and that you first saw her bright light over your starboard bow. Were you then near enough to her to have seen her green lights, if she had any?

Answer. We was.

5th x int. You say she crossed your bow. Did you change your course any as you approached her and, if so, how?

Answer. We did not change, as I suppose, any; until we could see the propeller's hull right across our bow, and then our wheel was put hard a-port as soon as we saw the hull of the propeller.

6th x int. So that when you passed her your jib-boom went over her larboard quarter, did it?

Answer. Yes, sir.

7th x int. All that time how many points had you changed your course to the southward of southeast by south half south?

Answer. Little or nothing at all; we had not time to come too a bit.

8th x int. When the propeller you saw crossed your bows, did
383 she head at right angles to your bows?

Answer. Very near.

9th x int. At what speed, in your opinion, was the propeller running when you passed?

Answer. I do not know.

10th x int. When she passed or after she passed under your bows, you could have seen her red light, if she had any, could'nt you?

Answer. Yes. sir.

11th x int. On that voyage was the wind fair when you left Chicago?

Answer. Yes, sir.

12th x int. Was it the first, second, or third night after you left Chicago, if either, when you met the propeller you speak of?

Answer. The third night.

13th x int. You are positive about this, are you?

Answer. Yes, sir.

384 14th x int. At the time you passed the propeller you saw, and when you say she went under your bow, are you certain that the propeller was under headway?

Answer. She was, or we never could have chased her.

15th x int. What was your watch on deck that night?

Answer. The dog watch, from six to eight. I was just going below as the propeller came along. The captain's watch commenced at eight.

16th x int. At what time did you come on deck?

Answer. I came on deck at six in the evening and remained on deck till night.

PETER MOWAT.

385 And the said W. E. Parsons was by me on the sixth day of December, A. D. 1862, first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, I carefully examined the said W. E. Parsons, and he did thereupon depose and say as follows, to wit:

1st. int. What is your name, age, occupation, and place of residence?

Ans. My name is W. E. Parsons; age 33; am an engineer; and reside in Muskegon, Michigan.

2d. int. Where and how were you employed on or about the 16th of September, 1860, and how have you been employed since then, and how long have you been in such employ?

Ans. On or about the 16th of Sept., 1860. I was the first engineer
386 on board of the propeller Ottawa, and have been in the same employ ever since; have been in that firm's employ four seasons; three on the Ottowa and one on the tug Ryerson.

3d int. What kind of a rudder has the propeller Ottawa?

Ans. She has a wooden rudder.

4th. int. Since you have been employed on her, has she always had the same rudder? And if not, state what rudder she has had.

Ans. No, sir; she had an iron rudder at first; the wooden rudder has now been in two seasons.

5th int. Why was the change made?

(Objected to by Mr. Rae, proctor for respondent, because the engineer was not a wheelsman and not proven to be expert on the question of pilotage, and anything he might say would be mere hearsay, and not from his own knowledge as a ship-builder or a navigator; that we admit he is a skilful engineer, but not a wheelsman.)

Ans. In the first place, the rudder needed repair; in the second place, we considered that an iron rudder is not as good a one to steer with as a wooden one; it is not so thick, and has not as good a hold of the water; that is admitted by everybody.

387 6th int. Did the Ottawa steer well with the iron rudder, and was she perfectly manageable at all times?

Ans. That would be a pretty tough question to answer, "at all times." She did not steer quite as well then as she does now. There are times when an iron and wooden rudder will not control a vessel, and they cannot be kept off the beach.

7th int. Did the Ottawa, whether loaded or light, always readily answer her helm when she had the iron rudder?

(Objected to by Mr. Rae, because there is no proof in the case, as he remembers, that the Ottawa attempted to alter her course after the schooner had been seen running her down.)

Ans. Well, I don't know that I can answer that question; by the word always, means every time; she did not sometimes; there is no boat in the world that will always answer her helm.

8th int. What kind of signal lights did the Ottawa carry, and what oil did they burn?

Ans. The same signal lights she had when she first came out; they were square and colored glass; common glass, I suppose; she burnt kerosene oil at that time.

9th int. Do you consider kerosene oil proper oil to burn for signal lights; if not, why not?

388 (Objected to by Mr. Rae, as the witness may be an expert as to machinery oil, whether it gums or not, but he is not an expert as to candle-light, or kerosene light, or burning oil.)

Ans. I do not; it goes out too easy.

10th int. Was the Ottawa troubled in this way while she used those lights? (Objected to by Mr. Rae.)

Ans. I could not tell, personally.

11th int. Have you ever heard any complaint made about it; if so, by whom, how often, and what was said?

(Objected to by Mr. Rae, on the ground that it might have troubled the porter, but did not the propeller, and is impertinent, unless it is shown that it troubled other vessels.)

Ans. I have heard complaints; it is nothing but hearsay, from the porter; could not tell you how often; that would be impossible. I could not tell what was said; he growled that he had to get up and light or trim them.

12th int. Have you heard such complaints made by the porter, or others, more than once? And if so, state about how often, if you can.

(Same objection as last.)

Ans. I have, more than once. I don't as to the number of times, but frequently.

389 13th int. Have you the same lamps now in use on the Ottawa; if not, when was the change made, and why was it made?

Ans. We have not the same lamps now on the Ottawa. The change was made a year ago last spring. It was made to get better lights, I suppose; that is what they told me.

14th int. What oil do they now burn?

Ans. The oil man calls it signal oil; it is not carbon oil.

15th int. On the night of the collision how did the lights burn?

Ans. I could not tell. I was not on deck after the collision; when I went on deck the head-light was out; this was after the collision; it may have been two hours; may have been shorter or longer. I saw the mate light it then.

16th int. Where was the mate when he was lighting it?

Ans. In the pilot-house. They had a small light sitting on the companion way at the same time; but the big light was in the pilot-house.

17th int. Who else was in the pilot-house at this time?

Ans. I don't recollect anybody but the wheelsman.

390 18th int. Were the pilot-house windows open or closed at this time?

Ans. I could not say positively either way.

19th int. Do you know what made the head-light go out?

Ans. I don't know except what the mate said; he said he supposed the wind blew it out.

20th int. How long were they employed in trying to relight the head-light, and did it then continue to burn brightly?

Ans. I could not tell exactly; probably not more than two or three minutes; it is a short job to light a light; I presume it did burn brightly afterwards; I don't know anything about it.

21st int. State where the small lamps you speak of were placed; state, particularly, as to the location of the companion way, and how the lamp was situated in the companion way.

Ans. The companion way was right in front of the pilot-house, about three feet in height; it (the light) was on the top of the companion way; it was a common globe lantern.

22d int. Did you notice whether the red or green lights were burning at this time?

Ans. I did not; I should not have noticed the other if they had not been lighting it.

391 23d int. Do you recollect on that evening, after the collision with the Caledonia, of the propeller coming near colliding with a barque; if so, did you find the mate occupied in lighting the lamp before or after coming near such collision, and how long before or after?

Ans. I do recollect on that evening of the propeller, after the collision, coming near colliding with a barque; it was after the barque passed us, some half an hour or more, that I saw the mate lighting the lamp.

24th int. Did you hear any one call out, as the barque passed? If so, state what was said, if you recollect.

Ans. I did not hear any one. I staid until I thought she was going to run us down, and then I went on the other side till she had passed. The captain stood in the gangway on the hole the vessel made.

25th int. Did the Ottawa blow her whistle at this time; and if so, for how long a time before passing the barque?

Ans. She blowed her whistle; I don't know how long; for several minutes; when the whistle blows it seems long; she blew it unusually long at that time.

26th int. Did you stop or reverse the engine?

Ans. No, sir; neither.

392 27th int. How long a time, going at the rate of speed which the Ottawa was then going, would it have taken to stop her, and how far would she have run?

Ans. I never tried it, but it would take some little time; she might run a quarter or half a mile, but I don't know that she would that night.

28th int. You say that the whistle was blown unusually long; could you not have stopped the propeller in the time that the whistle was blowing?

Ans. I hardly think I could; I don't know; it seems very long to me when the whistle blows; it seems a half an hour when it is only a few minutes, because I hate to hear it.

29th int. After the collision with the Caledonia, did you notice or look to see what had become of her; and if so, did you see her?

Ans. After we got the engine started, I looked out to see if I could see her; I saw a vessel that I supposed was the one. I asked the question if we had not better see after her. The captain said, no; we must look after ourselves.

30th int. Did you know to what extent the schooner was damaged, and why did you not return to offer assistance?

Ans. I could not tell the extent of her injuries, except from small pieces on board; the reason we did not go to look after her was, the captain
393 did not see proper to; he was the captain of the vessel, and could do as he liked.

31st int. From fragments left on board of the Ottawa, did you not surmise that the schooner was badly damaged?

Ans. We did not suppose her hull was badly damaged, as there was no mark on ours, we supposed her front rigging was carried away.

32d int. After the collision, who first came down to the engine-room, and how long after?

Ans. The mate was the first man I saw from deck; it was a very few minutes.

33d int. How long was it before the captain came down?

Ans. It was but a few minutes; the mate went back, and the captain came down.

34th int. How did the mate get to the engine-room?

Ans. He came along to where the stairs had been, and fell down; he said he had examined the hull, and did not think it was much damaged. He asked me how long it would take to start the engine. I told him I did not know how long, but I would do it as soon as I could. As soon as I
394 got the engine started, the mate and captain asked me if the engine would go. I told him I thought it would; the mate then went on watch alone.

35th int. Did the captain have his coat on or off when he first came down?

Ans. I could not swear positively; I think he had it off.

36th int. During the different watches of the captain, did you ever know of his leaving his watch and going to any other portion of the boat than his proper place at or near the pilot-house? If so, state circumstances.

Ans. He frequently came down to visit me at the engine-room when it was cold, and then went back.

37th int. Did he ever fall asleep on those occasions in the engine-room?

Ans. I should judge he was; not a good many times, once in a while; a man coming from the cold to where it is warm will fall asleep. I have been on board of boats going across the lakes when there was no one on deck, but not on the Ottawa.

38th int. Were there no occasions when there was nobody on watch except the wheelsman on the Ottawa?

Ans. I have seen times when there was nobody forward but the wheelsman.

395 39th int. State any occasions or circumstances you can recollect.

Ans. One time in particular, when we had the foresail and jib set, there was a vessel came up under the lee of the canvas and came near running into us; it was a very bright moonlight night; the wheelsman could not see on account of the jib.

40th int. Where was the captain at this time, and what was he doing?

Ans. In the cabin playing euchre, along with Mr. Morris and several other gentlemen; the reason I know, I was standing in the hall looking in the cabin, and when the whistle blew, I looked out and saw the vessel nearly on us; I supposed everybody else looked out.

41st. int. At what hour of the night was this and where was the mate at this time?

Ans. It was about ten o'clock; the mate was in bed.

42d int. Who is this Mr. Morris you mentioned?

Ans. One of the firm of Ryerson and Morris; it was Robert Morris, and one of the owners of the boat, I suppose.

43d int. Do you know whether the captain always relieved the mate immediately on the expiration of the mate's watch?

396 Ans. I don't know except what the mate told me; he says he has sometimes waited till he was tired and then went to bed with no one on deck.

44th int. Where would the captain be on those occasions?

Ans. I don't know; I never went to see; did not attend to his business; as much as I could do to attend to my own.

45th int. Do you know of the Ottawa at any time running without a license? if so, state when, and where, and how long a time she so run, and all the circumstances about the same.

Ans. She was run without a license after it had expired before it was renewed; I know this because they made some fuss about it in Buffalo; they

were going to fine the boat there; but they got off by taking out a license; this was a year ago last October, I think; I presume she ran about a month without a license; might have been longer or shorter, couldn't tell?

46th int. What kind of a license did the captain get at Buffalo?

Ans. I believe it was a freight license; that is what they said they could give us; it being out of the Chicago district, that is all they could give us; I believe they did not have any passenger license then; I did not go to the record to see; it did not concern me.

47th int. Did the Ottawa still continue to carry passengers for the
397 rest of that season?

Ans. Yes, sir.

48th int. On the trip during which the collision with the Caledonia occurred, did the Ottawa have any passengers on board? if so, state whom and give their names if you can.

Ans. They had one lady on board, and child, Mrs. Myers, Captain Myers's wife; Myers is a sailor, and styled himself captain; he was a mate at that time; he called her his wife; that is the only way I knew.

49th int. What was the character and reputation of Mrs. Myers, and have you seen her since then, and where?

Ans. I don't know what she has as good character as any woman; I have seen her since on North Clark street, walking with her child; I have heard slurs put on her and other women; what I saw of her she appeared as a lady.

50th int. During the passage did you on any occasion see her enter any other state-room than her own? and if so, state what other and how long she remained?

Ans. I have seen her go into the captain's room in day time; don't know how long she staid; I may have seen her go into other rooms; the rooms
she went in were unoccupied, as far as I know; I don't know whether
398 the captain was in his room when Mrs. Myers was there; I don't know whether she was a passenger or a dead head.

51st int. On the occasion when you saw her enter the captain's room, how long did she stay?

Ans. I don't know; I did not see her again until supper time.

52d int. Was the captain around on deck during this time?

Ans. I did not see him; I presume I should have seen him if he had been.

53d int. Is not the general character and reputation of Mrs. Myers bad?

Ans. I could not tell anything about it.

54th int. Have you not heard her spoken of as being a woman of loose character?

Ans. I have frequently.

55th int. State as nearly as you can the reply that Captain Warren made when you proposed to go back and assist the Caledonia?

Ans. I told it before; he said let them go to hell, and we will take care of ourselves.

399 *Cross-examined by Mr. Rae.*

1st x int. Are you married?

Ans. Yes, sir.

2d x int. Have you a family?

Ans. Yes, sir.

3d x int. How long have you resided where you now reside?

Ans. Three or four years.

4th x int. Be good enough to say that when the Ottawa carried these kerosene signal lamps, whether a great many vessels did not carry the same kind?

Ans. I could not tell as to that; I don't know.

5th x int. How long had you been on deck after the collision, when you saw the mate lighting the head-light?

Ans. Just came on deck around forward; I cannot state from my own knowledge how long it had been out; but think not long; it was entirely out.

6th x int. State whether the head-light was returned to its place on top of the pilot-house after it was lighted?

400 Ans. I presume it was; but it was not when I left; I only staid a minute.

7th x int. Did you see deck hands on deck at that time?

Ans. No.

8th x int. What kind a man was the mate, was he a good man?

Ans. I consider him a good man.

9th x int. How long had the mate been on deck when you went on deck?

Ans. I could not tell; I presume he went on deck nearly as soon as the collision occurred, and the captain came below during the time we were laying still; I don't know whether he was on deck or not.

10th x int. Was the propeller mooring at the time the barque passed?

Ans. She was.

11th x int. Was the engine disabled in any way by the collision?

Ans. Yes, sir; it stopped the engine and broke some of her gear.

12th x int. Did the engine go both ways after this?

401 Ans. Yes; the boat would not move backwards except by hand.

13th x int. How long had the mate been on deck when the barque passed by?

Ans. I could not exactly tell; it passed a short time after the collision; it might have been an hour or less.

14th x int. Are you sure the engine was working an hour after the collision?

Ans. Yes; it took me but a short time to repair; we had to clear the engine-room of the litter; it was all light.

15th x int. What did you do to the engine during that time?

Ans. I took one eccentric off; part of the hand gear; that's all.

16th x int. Did you not state that the mate was down with the captain during the time she was lying still?

Ans. I don't recollect how much of the time he was down there; he was down.

17th x int. Did you not say in your direct examination that as soon as you got the engine going the mate went up on deck to his watch and left the captain down?

Ans. Yes, sir.

402 18th x int. How long had he been down, sir, before he went up?

Ans. I told you before, I did not recollect.

19th x int. You don't know of his being on deck at all before you went to repair the engine, and after it was repaired he went up on deck to his watch?

Ans. Yes, sir; I think he was; I did not see him there; he did go up to get some tools in the captain's office; I presume he brought them right back; don't know how long he was gone.

20th x int. Was that the only instance of your knowing him going on deck during that time?

Ans. That is the only positive instance that I know of; I was not on deck; I was attending to my business.

21st x int. Whose little girl was this on board of the boat with the lady, was it her child?

Ans. It was supposed to be hers; she called the woman mother; I had no reason to suppose it was not so.

22d x int. The child would run into state-rooms and play around, and she would follow it, wouldn't she?

Ans. I don't recollect of seeing the child go into state-rooms; it
403 might; it was down on deck often.

23d x int. Was the night of the collision a windy night?

Ans. It blowed a pretty fresh sailing breeze.

24th x int. Did you ever see yourself the head-light out before that time?

Ans. Not that I recollect of.

25th x int. With whom did you first have an interview in regard to giving testimony for the libellant in this cause?

Ans. Mr. Proudfoot.

26th x int. Where did you see him, sir?

Ans. I met him at the St. Charles saloon, on Clark street, called Mat. Conley's saloon; it is a drinking and eating saloon; I think it was last Wednesday evening, the third of Dec, 1862.

27th x int. How came you to meet him there?

Ans. It was a mere accident; he was sitting and talking to Captain Burg, a friend of mine, and Burg introduced him to me.

28th x int. How came you to go into the St. Charles Hotel?

Ans. I went in with Mr. Good and J. R. Outright; Mr. Good proposed to have some oysters; Mr. Good lives on West Lake street, opposite
404 the engine-house; he used to be an engineer and has now a machine shop on North Water street, opposite the Northern Transportation Co. dock; a partner of Ditmark; Outright lives in Muskegon; has a store there, and buys lumber and shingles.

29th x int. Did Mr. Proudfoot sit down with you and eat oysters?

Ans. Yes, sir; Mr. Proudfoot says he paid for the treat; I did not know till just now.

30th x int. Had you any conversation with Proudfoot about this case then?

Ans. Yes, sir.

31st x int. Did you drink any wine, ale, or liquors, while you were there?

Ans. No, sir; but the rest did.

32d x int. Where and when did you next see him?

Ans. At the Garden City Hotel; I think on Thursday.

33d x int. Did you meet him by appointment?

Ans. No, sir; I am boarding there.

34th x int. When did you give him a statement of what you could prove in this case?

405 Ans. He asked me some question on both of these occasions, and I told him all I knew of it.

35th x int. When did you first give him a statement that was put in writing by him?

Ans. To-day; I suppose in my testimony this morning.

36th x int. Where did he get the statement here referred to this morning, in examining you?

Ans. I guess he made it; I never saw it before.

37th x int. Who else have you seen, recently, beside Proudfoot, and conversed with them about this matter?

Ans. Nobody, sir.

38th x int. When did you first communicate with Mr. Ryerson and the captain, and told them that you had given Mr. Proudfoot a statement of what you could prove?

Ans. They never asked me, either of them, till last night Mr. Ryerson came to see me about it.

39th x int. Did you not tell Mr. Ryerson that you did not know anything about the case, and could not prove anything, and did not know why they had sent for you?

406 Ans. I told him I did not know anything about the collision till after it happened, and did not know that I could do anybody any good, or any harm.

40th x int. Did you tell him that you had seen Mr. Proudfoot within a day or two, on two occasions?

Ans. I don't recollect whether I did or not; he asked me whether they had been to me, and pumping me; I told him they had not. I don't consider that when a man asks me a fair question that he is pumping me.

41st x int. Did you not state to Mr. Ryerson, or Captain Warren, that you had been subpœnaed here this morning, and that you would not come, that you did not know what they wanted with you?

Ans. I don't recollect that Captain Warren ever spoke to me about it; Ryerson spoke to me about it; I did not tell him I would not come; when he saw me the subpœna was served on me.

42d x int. When were you paid off by the propeller the last time?

Ans. I settled with the captain on Wednesday, got a due bill, and did not get my money for a few days.

43d x int. Was it about the time you first saw Mr. Proudfoot, the Thursday of that same week?

407 Ans. I rec'd my money on Thursday the same week; I saw him before and after; I saw Mr. Proudfoot on the same day, and rec'd my due bill.

44th x int. Were you still connected with the propeller when you first saw him?

Ans. No, sir; I settled with the captain and rec'd my due bill before I saw him.

45th x int. How soon after you rec'd your due bill did you see Mr. Proudfoot?

Ans. It was the evening of the same day.

46th x int. Did Mr. Othwait and you ever have any conversation about being a witness in this case, or anything about it; if so, when?

Ans. We never had any conversation that I know of in particular about it; we may have talked about it some.

47th x int. Do you know whether that gentleman is friendly to the captain or Mr. Ryerson?

Ans. I don't know anything to the contrary.

48th x int. Did they not have some questions about charging him freight, which he thought they should not have charged him, about the time you settled?

408 Ans. Not as I know of, sir.

49th x int. Did you ever hear him say anything about charging him some freight last year on some shingles he brought?

Ans. I don't recollect that I ever did.

50th x int. Where were you when the collision occurred?

Ans. Sitting in the engine-room.

51st x int. Did you hear the whistle blow when the collision occurred?

Ans. Yes, sir.

52d x int. How long did it blow before the collision occurred?

Ans. Some minutes, I could not tell how many.

53d x int. When did you next hear the whistle blow, and where were you standing?

Ans. The next time the whistle blew was when the barque passed; I was standing aft somewhere.

54th x int. Was the engine going then, and how long was it going?

409 Ans. Yes, sir; it was going, and had been running some little time, don't recollect how long.

55th x int. How long did you remain below, after that, before going on deck, and did you go on deck after that?

Ans. I could not tell, to the time, how long I remained below before going on deck, after the barque passed; I was there on deck but a few moments.

Re-direct by Mr. Proudfoot.

1st int. Can you not state about the time that elapsed, after the collision, before the barque passed, and also about the time that elapsed after the barque passed before you went on deck?

Ans. I could not answer exactly; the barque might have passed three-quarters of an hour, more or less, and it was probably a half an hour after the barque passed that I went on deck.

2d int. When you came to the St. Charles saloon, on the evening you mentioned, did you expect to meet Mr. Proudfoot?

Ans. No, sir.

3d int. State, as nearly as you can recollect, what Mr. Proudfoot said to you at that interview.

410 Ans He asked me what I knew about it; he told me to tell him straightforward what I knew about it, let it fall where it would. He said his object was to get me because all the men on board had been on the stand except me, and I told him all I knew about it.

4th int. In the seventh direct interrogatory you are asked if the Ottawa, whether loaded or light, always readily answered her helm during the time she had the iron rudder; have you anything further to answer to that question? if so, state fully.

Ans. She would not answer it sometimes; not always; I have known her to turn around when it was blowing a gale of wind, when she was light; I never knew her to turn around when she was loaded.

5th int. Do you mean to be understood that she would turn around when she was light and the wind was blowing heavily, notwithstanding the man at the wheel endeavored to prevent it?

Ans. Yes, sir.

6th int. Can you state any occasions in particular when this happened?

Ans. Not as to the day or month, but did in the fall of 1860, the fall of the collision; I believe the captain was at the wheel assisting; she

411 went round two or three times. This often happens with boats when they won't steer to let them go clear around to give them headway and to get them on their course again.

7th int. Did you, after the collision, have any conversation with Captain Warren, Mr. Baldwin, or Mr. Ryerson, in regard to you being a witness in this case? if you did, state what was said by yourself, and by the person who spoke to you.

Ans. I don't recollect of having any conversation, except with the captain; we merely referred to it; don't recollect of talking with Mr. Ryerson about it; I have talked about it with Baldwin; Baldwin and I talked about going back to the schooner to see what damage had been done; he and I both thought we ought to have gone back and rescue the crew, if necessary, That is the principal part of our conversation; we did not know what damage had been done, and it would not have hurt us to go back.

8th int. Did you not state to Mr. Baldwin how you would testify if you went on the stand as a witness; and what did you say in relation thereto?

Ans. I told him if they would ask me those questions I would answer them correctly, I would be obliged to; he either asked me or I told him that I asked the captain if he was going back to see the schooner, and I would say so if they asked me in court. This was on the same trip with the collision.

412 *Re-cross-examination by Mr. Rae.*

1st re-x int. How long had you been going, after the collision, when you looked out and saw the schooner?

Ans. A very few minutes, not over ten; it may have been less.

2d re-x int. What direction did she appear from you, and where did you stand and look at her?

Ans. I stood little aft the engine at the *w*hole the engine made on her port quarter; she was very far off, probably a mile, more or less; I don't know that it was the schooner; I saw some vessel that I took to be her; I could see nothing but the sails; they were hanging, flapping in the winds; I did not see her jibs; I only saw two sails, the foresail and mainsail; I could not tell how she was heading, in reference to the steamer, whether her head or her stern was to us.

WM. E. PARSONS.

Endorsed: Filed June 25, 1863.

WM. H. BRADLEY, *Clk.*

413 And afterwards, to wit, on the 16th day of April, A. D. 1862, in the record of the proceedings of the circuit court in said cause the following entry, to wit:

ROBERT STEWART, PACIFIC MUTUAL INSURANCE COMPANY, OF NEW YORK, and THE ARCTIC INSURANCE COMPANY, OF NEW YORK, *v.* PROPELLER OTTAWA. } Appeal.

The court having fully considered and being fully advised upon the application of the libellants, by their proctor, on affidavit heretofore filed, for leave to cross-examine Walter Ellis, a witness whose deposition has been taken and filed by the respondents, herein sustains said motion, and grants leave to further cross-examine said witness, subject to all legal exceptions, the libellants to give reasonable notice of the time and place of such further cross-examination.

414 Deposition of Walter Ellis, taken before Azariah T. Galt, under leave of the court granted on the 16th day of April, A. D. 1862, to cross-examine him the said Walter Ellis, taken on the 18th day of April, A. D. 1862:

And the said Walter Ellis was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid. I carefully examined the said Walter Ellis and he did thereupon depose and say as follows, to wit:

Re-cross-examination by order of the court.

1st re-x int. You state in your answer to the sixth direct interrogatory "that the captain asked you if you saw a light, you told him that you did see it, and he told you to steer for it." What was the exact position of this light, as regards the Caledonia, at the time you saw it?

Answer. Right ahead, sir.

415 2d re-x int. How long before the collision was it that you first saw this light?

Answer. About a half an hour, sir.

3d re-x int. Did you, on the twenty-second day of September, 1860, after having been at the office of Samuel T. Atwater, in the city of Chicago, to swear to the protest in this collision case, go to the office of Mr. Robert Stewart, on West Canal street, near Madison street bridge, and have a conversation with Mr. Charles Stewart in reference to your wages and the collision?

Answer. Yes, sir; I had some conversation in reference to the loss of the Caledonia, but not about my wages with him, as I recollect.

4th re-x int. Did you not, at that conversation, demand of Mr. Charles Stewart payment for the loss of clothes, which you alleged you had lost by reason of the collision, and which you claimed were worth fifty dollars?

(Objected to by proctors for respondent on account of its immateriality and being a collateral matter, in which the witness cannot be con-
416 tradicted.)

Answer. Well, sir, I went down to Mr. Stewart in the morning and told him I had lost my clothes, and hoped he would recompense me for my clothes. I demanded no particular sum. He refused to pay me anything. He told me, if he was rich enough, he would give me five dollars, but he didn't do it. This conversation was with Mr. Robert Stewart; I had no conversation about clothes with Mr. Charles Stewart.

5th re-x int. You understand I am referring to a conversation which took place on the twenty-second day of September, 1860, after you had been to the office of Mr. Atwater to swear to the protest, do you?

Answer. Yes, sir.

6th re-x int. Did you or not, on the refusal of Mr. Robert Stewart to pay you for the loss of your clothes, say "to Mr. Charles Stewart" that if you did not get your pay out of his father, you would get it out of some
417 one, or words to that effect?

(Objected to by proctors for respondent, for the reasons assigned to the fourth interrogatory, and because it is vague and uncertain.)

Answer. No, sir; I don't remember of saying such a word.

7th re-x int. Did you or not at this conversation threaten revenge, and say you would make him pay for it some day or other, or words to that effect?

(Objected to by proctors for respondent, for the reasons assigned to the last interrogatories, and for another reason that it does not state the kind or what manner of revenge.)

Answer. No, sir; that is all lie.

8th re-x int. Did you or not, at a conversation referred to in the tenth cross-interrogatory, which conversation took place on or about the fourth day of March, 1862, (at the office of the proctor for the libellant in this case, the libellant and John Anderson having accompanied you to the office
418 of the said proctor,) between you and the said proctor, state, upon his asking you to tell him what you know in regard to this collision, that you would make no statements whatever unless you were paid fifty dollars, which was the amount you alleged your clothes which you had lost by reason of the collision were worth?

(Objected to by proctors for respondent, on the grounds that the question is concerning immaterial matter, and by which the witness cannot be impeached, and also for the further reason that the communication was of a privileged character, being a reply to a question put by an attorney in the cause to a witness.)

Answer. I never made no proposition for any amount of money. I told this gentleman that what little I did know, I wanted to get something for my clothes. I did not calculate to get any money for anything else but my clothes.

9th re-x int. Did you not at that conversation, and in connection with a

demand for payment for the loss of your clothes, state "that two men from the other side (as you expressed it) had been after you and wanted
419 you to go and see Captain Warren, or Mr. Martin Ryerson, or Mr. Dexter?"

(Objected to by the proctor for the respondent, for the same reason as the last in regard to immateriality.)

Answer. Yes, sir; two men came over for me to go down and see the captain of the boat or Mr. Ryerson. Mr. Dexter's name was not mentioned.

10th re-x int. Did you or not then consent to make a statement; and did you or not state that the course of the Caledonia was not changed, and that no order was given to change the course of the Caledonia from south-east by south half south until a moment before the collision, when you heard the mate order the wheel to port?

Answer. I consented to make a statement. I did not state that the course of the Caledonia was not changed. The course was not changed, to my recollection. I steered for the light and not by the compass. The captain never told me, and I did not know whether she was going her course or not. The captain did not tell me to change my course, and no one else;
420 and he told me to put the wheel up the next order—the captain did—and then the mate told me to put the wheel down.

(The answer objected to by the proctor for libellant as irresponsive.)

11th re-x int. Will you now state whether or not, at the conversation above alluded to, you stated to the proctor for the libellant that, until the mate ordered you to put the wheel down, no order was given by any one in regard to the wheel?

(Objected to by proctor for respondent, as calculated to mislead the witness, the witness having fully answered above.)

Answer. No, sir; I did not tell him so. The captain told me first to put the wheel up, and then the mate told me to put it down.

12th re-x int. Did not the proctor inform you, at that time, that he would call you as a witness in the case, and let you know when you would be wanted?

Answer. Mr. Proudfoot told me that he would want me for a wit-
421 ness, and would let me know through Mr. Anderson or Mr. Stuart when he would want me, which would be in three or four days. They did not call on me.

13th re-x int. Did you or not, on the day following this conversation, or two days after it, come to the office of the proctor for the libellants alone, and say to him that you wished to correct a statement which you had made at the former conversation in regard to no order having been given by any one about the wheel until the mate ordered the wheel to port, and would then say instead "the captain, before the order was given by the mate, ordered the wheel up?"

Answer. I went to this gentleman's office the next morning, and told him that one part of what I had told him the day before had to be removed. It was about what the captain told me about the wheel, and I told you that the captain told me to put my wheel down, it should have been "up." You told me you wanted me to tell the truth and nothing but the truth.

422 14th re-x int. Did you or not state that, immediately after the collision, you left for the south, and that no one had persuaded or offered any inducement for you to do so?

Answer. I did so state.

15th re-x int. Have you, since you were examined as a witness in this case on a previous occasion, had any conversations with any of the respondents, or with the proctors for the respondents, in this case? If so, state

when, with whom, if, and the conversations related to, the several points on which you have been cross-interrogated? State fully such conversations.

Answer. I do not recollect having had any such conversations.

Redirect examination by Mr. Dexter.

1st redirect int. After you returned to Chicago, subsequent to the loss of the Caledonia, and while at Chicago, before you went south, did the
423 libellants, or any one of them, request you to give your testimony, or to remain at Chicago for the purpose of giving your testimony?

Answer. No, sir; not one.

2d int. How long was it before you gave your testimony in this case that you became acquainted with Mr. Ryerson or any of his lawyers in this case; or any one you have since seen connected with the case on the side of Mr. Ryerson?

Answer. About three days before I was examined.

3d int. When you speak of an old-fashioned light, state, as near as you can, what you mean.

Answer. It is an old-fashioned light, and the glasses pull up with strings, and is smaller than the new-fashioned lights.

4 int. When did you go south in 1860?

424 Answer. On the 24th of September.

his
WALTER + ELLIS.
mark.

In presence of—
A. T. GALT.

Endorsed: Filed April 29, 1862.

WM. H. BRADLEY, *Clk.*

425 *Deposition of Chester Wadsworth, taken on behalf of the libellant, before P. A. Hoyne, U. S. commissioner, on the 2d day of June, A. D.* 1862.

And the said witness, being of lawful age and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

Chester Wadsworth, being sworn, testifies as follows:

I am engaged to go down to St. Louis, Mo., having been employed on the gunboat Essex. I know James Williams, the witness in this cause. He asked me on Saturday morning, a week ago, to go up and see the captain or Mr. Ryerson. In the afternoon of the same day he went to Mr. Proudfoot's office. Jim told me to go and see Mr. Ryerson, and tell him he had just got back from the wars, and was on the propeller at the time of the collision. I went to Mr. Ryerson's office, and he was not there. I then went on board the propeller Ottawa, and asked the captain if he knew "Norwegian Jim." He told me that he did; that he was a deck hand at the time
426 of the collision. I told him that I heard some conversation about the collision, with Jim; that if it was true, it would hurt the propeller. Jim told me to tell him that he was on board the propeller at the time of the collision; that if he was sworn against him, he would hurt the propeller. The captain replied, he was only a deck hand, and his testimony would amount to nothing.

Ques. What did he say was the object of his sending this message to the captain? and did he say anything in relation to a settlement being made?

Answer. He said he would rather have both parties settle, so that there would be no hard feelings on his part.

Cross-examination.

Jim had been to see Mr. Proudfoot before this conversation took place.

CHESTER WADSWORTH.

Subscribed and sworn to before me this 2d day of June, A. D. 1862.

P. A. HOYNE,
U. S. Com., N. D., Ill.

Endorsed: Filed Oct. 31, 1862.

WM. H. BRADLEY, *Clerk.*

427 And afterwards, to wit, on the 24th day of June, A. D. 1863, in the record of the proceedings of said court, in said cause, is the following entry, to wit:

ROBERT STEWART *et al.*
v.
PROPELLER OTTAWA. } Appeal.

Now comes the respondent, by his proctor, and moves the court for leave to file an amended answer.

And afterwards, to wit, on the 26th day of June, A. D. 1863, in the record of the proceedings of the said court, in said cause, is the following entry, to wit:

ROBERT STEWART *et al.*
v.
PROPELLER OTTAWA. } Appeal.

The court having considered the motion of the respondent for leave to file an amended answer, sustains the same and grants leave to file an amended answer, subject to any questions as to costs that may hereafter raised.

428 Amended answer, filed by leave of the court, granted the 26th day of June, A. D. 1863, reads in the words and figures following, to wit:

To the honorable judge of the circuit court of the United States for the northern district of Illinois, in admiralty:

The amended answer of Martin Ryerson, of Chicago, in said circuit, intervening for his interest in the propeller Ottawa, to the amended libel of Robert Stewart, of Chicago, and the Pacific and Arctic Insurance Companies of New York, answers and alleges as follows:

First. That this respondent admits the matter alleged in the first article of said libel, and neither admits nor denies the matter stated in the second article of said libel.

Second. That the respondent denies the matter stated and alleged
429 in the third, fourth, fifth, sixth, and seventh articles of said libel, and demands strict proof to be made thereof.

Third. That this respondent admits the matter stated in eighth and ninth articles of said libel, and of the tenth article of said libel, so far as relates to the jurisdiction of said court.

Fourth. That on or about the sixteenth day of September, A. D. 1860, at about the hour of half-past seven in the evening, the said propeller Ottawa, then being on Lake Huron, off Thunder Bay island light, having on board a full complement of officers and crew, with all her lights properly set and brightly burning, with a good and skilful look-out properly stationed, so as

to have a wholly unobstructed view of approaching and passing vessels, and at the earliest moment to discover their approach and watch their movements, and so stationed as to readily communicate with the man at the wheel, was then and there carefully navigating said lake at a safe and prudent rate of speed, and heading northwest, the wind then being
430 fresh from off the land and about west or a little south of west, and the night being dark; that at or about that time the look-out on said propeller discovered, at some distance from said propeller, a light nearly ahead of said propeller and a little on her larboard bow, and at the same time a light on her starboard bow; that the said propeller safely passed the said light on the starboard side and then changed her course to the northward to keep clear of the vessel whose light was then ahead and a little to the larboard side; that before and at the time the said propeller changed her course to the northward every care and precaution was used to ascertain whether she could safely do so, and a good and vigilant look-out was kept to discover any craft which might chance to be sailing near to said propeller; that a few minutes after said propeller had so changed her course, the look-out on said propeller discovered a sailing vessel and no light under her port bow, and so near to her that it was impossible for said propeller either to change her course or to slow and reverse her engines, and the said
431 propeller at once blew her whistle as a signal to those on board said schooner that said schooner was approaching said propeller; that, notwithstanding the outlines of said schooner were seen immediately before the collision by the look-out on said propeller, yet no light was discovered on said schooner, although said look-out at the time carefully sought for said light; that said schooner was going off large, and if provided with a competent crew, was perfectly manageable and under the control of her officers and crew, but that the said schooner was carrying at that time too heavy press of sail, and sailing at a rapid and dangerous rate of speed, being in a place much frequented by vessels, and the night being very dark and squally with high wind; that said schooner had an insufficient crew, and was not properly manned and officered; that said schooner did not carry a good and sufficient bright light, properly placed, so as to be seen by approaching
432 vessels; that the master of said schooner was not diligent or careful, and acted in an unskilful and unseamanlike manner; that the look-out on said schooner was unskilful, incompetent, and ignorant, and not attentive to his duty; that said schooner was not so navigated and managed at the time of the collision as good seamanship, prudence, care, and skill would require under the circumstances; that said propeller was so carefully navigated that said schooner could not have approached said propeller without being discovered by said propeller, unless some time before the collision she had been navigated with an insufficient light, or with a light so obscured from the observation of those on board said propeller, by reason of said schooner deviating from her course after she had seen said propeller's light; and the respondent alleges that the said schooner did so deviate from her course, and was so navigated as to obscure her light, if she had any; and instead of keeping on her course, as it was her duty to do, she steered for the light of said propeller, thus making it impossible for the propeller
433 to avoid her; that the rapid rate of speed, want of proper lights properly placed, deviation of the schooner from her proper course before the collision, negligence of the master, unskilful navigation of said schooner at the time of the collision, and incompetency of look-out on the part of the schooner, contributed to and produced the said collision, and not any want skill, prudence, or care in those having charge of said propeller.

Cross-examination.

Jim had been to see Mr. Proudfoot before this conversation took place.

CHESTER WADSWORTH.

Subscribed and sworn to before me this 2d day of June, A. D. 1862.

P. A. HOYNE,
U. S. Com., N. D., Ill.

Endorsed: Filed Oct. 31, 1862.

WM. H. BRADLEY, *Clerk.*

427 And afterwards, to wit, on the 24th day of June, A. D. 1863, in the record of the proceedings of said court, in said cause, is the following entry, to wit:

ROBERT STEWART *et al.*
v.
PROPELLER OTTAWA. } Appeal.

Now comes the respondent, by his proctor, and moves the court for leave to file an amended answer.

And afterwards, to wit, on the 26th day of June, A. D. 1863, in the record of the proceedings of the said court, in said cause, is the following entry, to wit:

ROBERT STEWART *et al.*
v.
PROPELLER OTTAWA. } Appeal.

The court having considered the motion of the respondent for leave to file an amended answer, sustains the same and grants leave to file an amended answer, subject to any questions as to costs that may hereafter raised.

428 Amended answer, filed by leave of the court, granted the 26th day of June, A. D. 1863, reads in the words and figures following, to wit:

To the honorable judge of the circuit court of the United States for the northern district of Illinois, in admiralty:

The amended answer of Martin Ryerson, of Chicago, in said circuit, intervening for his interest in the propeller Ottawa, to the amended libel of Robert Stewart, of Chicago, and the Pacific and Arctic Insurance Companies of New York, answers and alleges as follows:

First. That this respondent admits the matter alleged in the first article of said libel, and neither admits nor denies the matter stated in the second article of said libel.

Second. That the respondent denies the matter stated and alleged
429 in the third, fourth, fifth, sixth, and seventh articles of said libel, and demands strict proof to be made thereof.

Third. That this respondent admits the matter stated in eighth and ninth articles of said libel, and of the tenth article of said libel, so far as relates to the jurisdiction of said court.

Fourth. That on or about the sixteenth day of September, A. D. 1860, at about the hour of half-past seven in the evening, the said propeller Ottawa, then being on Lake Huron, off Thunder Bay island light, having on board a full complement of officers and crew, with all her lights properly set and brightly burning, with a good and skilful look-out properly stationed, so as

to have a wholly unobstructed view of approaching and passing vessels, and at the earliest moment to discover their approach and watch their movements, and so stationed as to readily communicate with the man at the wheel, was then and there carefully navigating said lake at a safe and prudent rate of speed, and heading northwest, the wind then being
430 fresh from off the land and about west or a little south of west, and the night being dark; that at or about that time the look-out on said propeller discovered, at some distance from said propeller, a light nearly ahead of said propeller and a little on her larboard bow, and at the same time a light on her starboard bow; that the said propeller safely passed the said light on the starboard side and then changed her course to the northward to keep clear of the vessel whose light was then ahead and a little to the larboard side; that before and at the time the said propeller changed her course to the northward every care and precaution was used to ascertain whether she could safely do so, and a good and vigilant look-out was kept to discover any craft which might chance to be sailing near to said propeller; that a few minutes after said propeller had so changed her course, the look-out on said propeller discovered a sailing vessel and no light under her port bow, and so near to her that it was impossible for said propeller either to change her course or to slow and reverse her engines, and the said
431 propeller at once blew her whistle as a signal to those on board said schooner that said schooner was approaching said propeller; that, notwithstanding the outlines of said schooner were seen immediately before the collision by the look-out on said propeller, yet no light was discovered on said schooner, although said look-out at the time carefully sought for said light; that said schooner was going off large, and if provided with a competent crew, was perfectly manageable and under the control of her officers and crew, but that the said schooner was carrying at that time too heavy press of sail, and sailing at a rapid and dangerous rate of speed, being in a place much frequented by vessels, and the night being very dark and squally with high wind; that said schooner had an insufficient crew, and was not properly manned and officered; that said schooner did not carry a good and sufficient bright light, properly placed, so as to be seen by approaching
432 vessels; that the master of said schooner was not diligent or careful, and acted in an unskilful and unseamanlike manner; that the look-out on said schooner was unskilful, incompetent, and ignorant, and not attentive to his duty; that said schooner was not so navigated and managed at the time of the collision as good seamanship, prudence, care, and skill would require under the circumstances; that said propeller was so carefully navigated that said schooner could not have approached said propeller without being discovered by said propeller, unless some time before the collision she had been navigated with an insufficient light, or with a light so obscured from the observation of those on board said propeller, by reason of said schooner deviating from her course after she had seen said propeller's light; and the respondent alleges that the said schooner did so deviate from her course, and was so navigated as to obscure her light, if she had any; and instead of keeping on her course, as it was her duty to do, she steered for the light of said propeller, thus making it impossible for the propeller
433 to avoid her; that the rapid rate of speed, want of proper lights properly placed, deviation of the schooner from her proper course before the collision, negligence of the master, unskilful navigation of said schooner at the time of the collision, and incompetency of look-out on the part of the schooner, contributed to and produced the said collision, and not any want skill, prudence, or care in those having charge of said propeller.

Fifth. That all and singular the premises are true. Therefore the respondent prays this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise law and justice to administer in the premises.

MARTIN RYERSON.

WALKER VAN ARMAN & DEXTER,
Proctors for Resp't.

A. W. ARRINGTON, *Counsel.*

[SEAL.] Subscribed and sworn to before me this twenty-fifth day of June, A. D. 1863.

WILLIAM F. WHITEHOUSE, *Notary Public.*

{U. S. Rev. S.}

Endorsed: Filed June 26, 1863.

WM. H. BRADLEY, *Clk.*

434 *Protest—Libellant's*

United States of America.

STATE OF WISCONSIN, *City and County of Milwaukee, ss:*

To all to whom these presents shall come or may concern, I, D. M. Brigham, a public notary in and for the State of Wisconsin, by letters patent under the great seal of the said State, duly commissioned and sworn, dwelling in the city of Milwaukee, send greeting:

Know ye, that on the 21st day of September, in the year of our Lord one thousand eight hundred and sixty, before me, the said notary, appeared L. J. Bangs, master of the schooner called the Caledonia, of Chicago, burthen 137 tons, and noted in due form of law with me, the said *the said* notary, his protest, for the uses and purposes hereinafter mentioned. And now, at this day, to wit, the day of the date hereof, before me, the said notary, at the city of Milwaukee aforesaid, again comes the said L. J. Bangs, and requires me to extend his protest; and, together with the said L. J. Bangs, also
435 came John Anderson, mate, belonging to the aforesaid schooner, all of whom being by me duly sworn, voluntarily, freely, and solemnly do declare and depose as follows, that is to say: That at 4 o'clock p. m. on Thursday, September 13th, 1860, the above-named appearers, in their several capacities aforesaid, set sail and departed in and with the said schooner Caledonia, from Chicago, Illinois, having on board the said schooner a cargo of six thousand one hundred and two (6,102) bushels wheat, and bound for the port of Buffalo, N. Y.; that the said schooner was then stout, staunch, and strong, had her cargo well and sufficiently stowed and secured, was well masted, manned, tackeled, victualed, appareled, and appointed, and was in every respect fit for sea and the voyage she was about to undertake; that when they left Chicago the wind was from the SE. fresh; steered north northeast; wind continued in same direction and increasing until 2 o'clock a. m. of Friday, Sept. 14th, when they carried away foresheet. At four o'clock p. m. made Point Betsey, and at eight o'clock p. m. they were abreast the South Manitou island; at ten o'clock p. m. wind came from the south-
436 ward strong and sea heavy; made Grand Traverse light, took in mainsail, topsail, and flying jib; at twelve o'clock midnight made

the light at head of Beaver Island, weather squally, rainy and thick: at three o'clock a. m., Saturday, Sept. 15th, made Shellagalee and Waugashance light, steering east quarter north; at eight o'clock a. m., set mainsail with double reefs; at ten o'clock, rounded Old Machinac Point, and came to anchor in ten fathom water; pumped ship and found considerable water in her; continued at anchor until Sunday, at 6 o'clock a. m, when hove up anchor and got under way, all sails set, wind SW., strong breeze and squally off land; at eight o'clock a. m., they were abreast Sheboygan light, steering SE by S; at four o'clock p. m., abreast Presque Isle, heavy squalls off land, accompanied by rain, reefed topsail; about 7 o'clock p. m, made Thunder Bay Island light, bearing south about eight miles distant, steering SE. by S., half S.; vessel sailing about seven miles an hour, carrying a bright light on her pawl-bits, weather dark and squally. At the time the captain, who was on watch, saw a red light ahead, and went forward to see if he could
437 distinguish the vessel carrying it; as he reached the bows he heard a steamer's whistle sounded *once*, but could see nothing but the light; ordered wheel hard aport, which order was obeyed, and the vessel came up, answering the wheel immediately, about one minute after the order was given; and while the vessel was swinging around, she came in collision with a propeller, carrying away jib-boom, bowsprit, and all the sails, stantions, and forward rigging on the larboard bow. The vessel immediately separated, the propeller passing on; they manned pumps and set them at work, and got tackle to the bows to support foremast, and endeavored to work the vessel ashore; but the head sails being gone, she would not work to windward; sounded and found ten fathom water, cleared starboard anchor as soon as they could and let it go; paid out all the chain and made end fast to foremast, which brought the vessel up in twenty fathom water; distance from shore probably eight to ten miles; on getting over the bows with a light *with a light*, they discovered that the starboard knighthead was
438 separated from the stern, and forced away, taking the planking with it, leaving an aperture about six inches wide, through which the water was rushing into the vessel's hold. The plank sheer on the starboard side was also forced out several inches beyond the deck, so that every sea which came over her pounced in through an aperture some three inches wide, and ten or fifteen feet long. It was soon evident that she was settling fast, although the pumps were worked constantly, and about ten o'clock p. m. she had settled down forward so that the decks were even with the water; and it being certain that she must sink, and that all their efforts would not save her, the crew left in their small boat and steered for shore. The light on the pawl-bits was still burning, and continued visible from the boat for about half an hour after leaving her, when it disappeared and they lost sight of the vessel altogether. They reached land about three o'clock a. m. Monday, and encamped in the woods, no house being visible. At daylight nothing was to be seen of the vessel; the crew were taken to Presque Isle
439 by a fishing boat, and on Wednesday were taken off by the propeller Iowa, and arrived in Milwaukee, Wis., at 9 o'clock a. m. on Friday, Sept. 21, 1860. And the said L. J. Bangs further says, that as all the damage and injury which already has or may hereafter appear to have happened or occurred to the said schooner, or her said cargo, has been occasioned solely by the circumstances hereinbefore stated; and cannot, nor ought not, to be attributed to any insufficiency of the said schooner, or default of him, this deponent his officers or crew, he now requires me, the said notary, to make his protest and this public act thereof, that the same may serve and be of full force and value as of right shall appertain. And thereupon the said L. J. Bangs doth protest, and I, the said notary, at his special instance and request, do by these presents publicly and solemnly protest

against winds, weather, and seas, and against all and every accident, matter, and thing had and met with as aforesaid, whereby or by means whereof the said schooner Caledonia, or her cargo already has or hereafter shall
440 appear to have suffered or sustained damage or injury for all losses, costs, charges, expenses, damages, and injury which the said schooner or the owner or owners of the said schooner, or the owners, freighters, or shippers of her said cargo, or any other person or persons interested or concerned in either, already have or may hereafter pay, sustain, incur, or be put unto by or on account of the premises, or for which the insurer or insurers of the said schooner or her cargo, is or are respectively liable to pay or make contribution, or average according to custom or their respective contracts or obligations, and that no part of such losses and expenses already incurred, or hereafter to be incurred, do follow him, the said L. J. Bangs, his officers or crew.

This done and protested in the City of Milwaukee, this twenty-first day of September, in the year of our Lord one thousand eight hundred and sixty.

In testimony whereof I, the said notary, have subscribed these presents and have also caused my seal of office to be hereunto affixed, the day and year last above written. [SEAL.]

D. M. BRIGHAM, *Notary Public.*

441 STATE OF WISCONSIN,
City and County of Milwaukee, ss:

L. J. Bangs, master, John Anderson, mate, seamen of and belonging to the shooner called the Caledonia, being severally duly sworn, do severally make oath and say that the foregoing instrument of protest hath been clearly read over to them, these deponents, and that the several matters and things therein contained are right and true in all respects, as the same are therein particularly alleged, declared, and set forth.

L. J. BANGS.
JOHN ANDERSON.

Subscribed and sworn to before me this 21st day of September, 1860.

D. M. BRIGHAM, *Notary Public.*

STATE OF ILLINOIS, *County of Cook, City of Chicago.*

To all people to whom these presents shall come or may concern: I, Samuel T. Atwater, a notary public for the city of Chicago, duly commissioned and sworn, dwelling in the said city, send greeting. Know ye that on the
442 22d day of September, 1860, personally appeared before me said notary, Thomas Jenkens, Richard Mc Shirley, Walter Ellis, John Steward, who each being duly sworn deposes and says, that the annexed instrument of protest, entered before D. M. Brigham, a notary public dwelling in the city of Milwaukee, State of Wisconsin. On the 21st day of September, 1860, by L. J. Bangs, master of schooner Caledonia of Chicago, and John Anderson, mate of said vessel, has been clearly read over to them, these deponents, and that the several matters and things therein contained are right and true in all respects, as the same are therein particularly alleged, declared, and set forth. And the said deponents further depose and say, that they were employed on board said within described schooner Caledonia as seamen at the time of the collision stated in the annexed protest.

THOMAS JENKINS.
his
RICHARD + Mc SHIRLY.
mark.
his
WALKER + ELLIS.
mark.
JOHN STEWARD.

443 Subscribed and sworn to before me this 22d day of Sept., 1860, in the city of Chicago.

[L. S.] SAMUEL T. ATWATER,
Notary Public, City of Chicago.

Indorsed:

It is admitted that the within is the original protest, and no evidence will be required to establish that it is such original protest.

WALTER VAN ARMAN & DEXTER,
Proctors for Resp'd,
WM. H. BRADLEY, *Clerk.*

Indorsed: Filed June 26, 1863.

444 And also on the 26th day of June, A. D. 1863, the following stipulation was filed in said cause, and read as follows, to wit:

Circuit court of the United States for the northern district of Illinois.

ROBERT STEWART
vs.
PROPELLER OTTAWA.

It is hereby stipulated by the respondent in the above-entitled suit, that it appears by the clearance book, kept at the custom-house in the city of Chicago, that the bark Arabia, in the year 1860, took out clearance papers on Thursday, September 13th of that year; and it is further stipulated, that it appears by the tonnage book, kept by Mr. Redmond Prindiville, during said year 1860, that on the morning of Friday, September 14th, A. D. 1860, the tow-boat George Sturges towed said bark Arabia out of the Chicago river.

Chicago, September 23d, 1864.

WALKER VAN ARMAN & DEXTER,
Proctors for Respd't.

Indorsed: Filed June 26th, 1862.

WM. H. BRADLEY, *Clk.*

445 The deposition of Walter Ellis, taken on behalf of the respondent, before Azariah T. Galt, on the 14th day of March, A. D. 1862.

And the said Walter Ellis was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid; I carefully examined the said Walter Ellis, and he did thereupon depose and say as follows, to wit:

1st int. What is your name, age, occupation, and place of residence?

Answer. My name is Walter Ellis; my age is thirty-five; my occupation is seaman; I live in Chicago.

2d int. Were you on board the schooner Caledonia on her last trip from Chicago to Buffalo in September, 1860?

Answer. Yes, sir.

3d int. In what capacity?

Answer. As seaman.

446 4th int. Where were you on the night of the collision?

Answer. I was at the wheel.

5th int. State at what time you went to the wheel, and what occurred after you took the wheel.

Answer. I went to the wheel at six o'clock on the evening of the collision, and the man at the wheel gave me the course southeast by south, half

south. I steered that direction about one hour and a quarter, as near as I can tell The captain asked me if I did not see a light? I told him I did not. Then I stood on my toes and I saw a little glimmer of light, and I told him; he then told me to steer for that light. I steered for the light until the boat blew her whistle; he, the captain, then told me to put my wheel up, and I put it up, and he, the captain, ran forward, and he called out to the man at the "lookout," but I do not know what he said during this time. Mr. Anderson, the mate, jumped out of the cabin, and he told me to put my wheel down, and I put my wheel down, and then the
447 vessel struck the boat.

Int. 6th. How was the night?

Answer. It was a dark night.

Int. 7th. Could you see the "lookout" from where you stood at the wheel?

Answer. No, sir.

Int. 8th. How was the schooner sailing?

Answer. About six or seven knots, as near as I can judge; she had all her canvas on.

Int. 9th. What course did you steer after the captain told you to steer for the light?

Answer. He never told me any course. He told me to steer for the light, and I steered for the light.

Int. 10th. Did you keep the light which he told you to steer for until the whistle blew, and was the light you steered for on the boat you struck?

448 Answer. I did keep the light he told me to steer for until the whistle blew; the light I steered for was on the boat I struck.

Int. 11th. Do you know what course you steered after the captain told you to steer for the light?

Answer. No, sir; I do not.

Int. 12th. How long was it before the collision that the whistle blew, and you put your wheel up; and how much, if any, did she answer the wheel when you put it up?

Answer. It was about one minute, or two, as near as I can judge; she might have answered the wheel from one point to two points.

Int. 13th. How much, in your opinion, did she answer her helm when you put it down, in obedience to the commands of the mate, Mr. Anderson?

Answer. About from two or three points, as near as I can judge.

449 Int. 14th. How did you keep the light which the captain told you to steer for?

Answer. I kept it inside of the jibboom on the forerigging, between the forerigging and the jibboom. I keep it open on the starboard bow.

Int. 15th. What kind of a lamp had the Caledonia?

Answer. She had one of these little old-fashioned lamps.

Cross-examination by Mr. Proudfoot.

1st x int. How was the Caledonia heading at the time you took the wheel?

Answer. Southeast and by south, half south.

2d x int. Where was the captain standing at the time you say he told you to put the wheel up?

Answer. He was standing in the main rigging, about third way from the stern of the vessel to the bow.

450 3d x int. Could you, from where you stood, see the reflection from the light on the pawl-bit of the schooner?

Answer. Yes, sir; I could.

4th x int. Did the light appear to be burning brightly up to the moment of the collision?

Answer. I could not swear whether it was or not, for I was right behind it. I could see the reflection up to the moment of the collision.

5th x int. You say, in answer to the eighth direct interrogatory, that the Caledonia at the time of the collision had all her canvas on: state what sails she was then carrying.

Answer. She had her jib fore staysail, all her topsail, foresail, and mainsail.

6th x int. In answer to the twelfth direct interrogatory, you say it was about one or two minutes after the whistle blew before the collision
451 took place; what do you understand as to the length of one minute, and do you mean sixty seconds?

Answer. I mean sixty seconds, sir.

7th x int. How much was the distance lessened between the two vessels during that time, or how far distant were the vessels from each other at the time the whistle blew?

Answer. Probably she might be a hundred and fifty yards, and she might not; I could not say the distance; it was very short.

8th x int How long after the whistle blew did you hear Anderson's order to put the helm down?

Answer. It might have been from a quarter to half a minute.

9th x int. Did this collision cause any loss to you? And if so, what?

Answer. I lost all my clothes, sir; I suppose they might be worth fifty or sixty dollars.

452 10 x int. Did you not, in a conversation with the proctor for the libellant in this case, which took place some ten days since, say that the light which you mentioned as having kept in view was directly ahead, and right in the course you were then steering; that you kept your eye on the compass. and that you did not vary at all up to the moment of the collision from a course southeast by south, half south?

Answer. If I did, I said wrong.

11th x int. Did you not, in that conversation, say that when you put your wheel up you merely turned it a few spokes, and that the vessel did not swing over a point, if she did so much?

Answer. I told the gentleman I put the wheel five or six spokes up, and she went off a point and a half; it might be more or less; I did not watch the compass.

12th x int. What was the color of the light which you say you steered for?

453 Answer. I don't remember what color it was.

13th x int. How did it happen that you lost your clothes?

Answer. The captain told the mate to tell us not to take them in the boat, because the boat would be too full with all of us and our clothes; none of the other seamen saved their clothes; Anderson, the cook, and the captain saved theirs.

14th x int. When the Caledonia answered her helm, after putting it down, at the order of Mr. Anderson, did her sails shake in the wind?

Answer. No, sir; not that I remember; I don't reccollect anything about that, whether her sails shook or not. She was not right dead before the wind, and she was not sailing on the wind; the wind was about west.

15th x int. What position did the main boom occupy at the time of the collision? and had the position of the boom been changed from the
454 time you first took the helm or the wheel?

Answer. The main boom was on the larboard quarter; its position had not been changed from the time I took the wheel. I mean in this instance by putting the helm "up," starboard; "putting down," port.

his
WALTER × ELLIS.
mark.

In presence of
A. T. GALT.

Indorsed: Filed March 19, 1862.

WM. H. BRADLEY, *Clk.*

455 Deposition of Thomas Ritchie, taken on behalf of the respondent before Azariah T. Galt, on the 22d day of April, A. D. 1862.

And the said Thomas Ritchie was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid. I carefully examined the said Thomas Ritchie, and he did thereupon depose and say as follows, to wit:

1st int. What is your name, age, occupation, and place of residence?

Answer. My name is Thomas Ritchie; my age is twenty-three; my occupation is sailor; I live in Chicago.

2d int. Do you know Walter Ellis? And if yea, how long have you known him?

Answer. I know Walter Ellis; I have known him three years, in May.

3d int. Did you have a conversation with Walter Ellis in 1860, at
456 Mobile, Alabama, concerning the loss of the Caledonia? And if yea, state the same? (Objected to by Mr. Proudfoot, proctor for libellants.)

Answer. I did have such conversation in October, 1860, with Ellis, at Mobile. I saw him at Mobile, Alabama, at the boarding-house where I lived; I asked him where he had been all summer; he told me he had been on the lakes; I asked him how he had made out; he said he was very unfortunate, he had lost all his clothes; he said he was on the Caledonia, and got run into by a propeller; the captain told him to steer for a light, and it was the propeller's light; the captain told him to put the helm up, and if it had not been for the mate the propeller would have run right over them; the mate told him to put it down; that is all. That is the substance of it; there may have been something more trifling.

Cross-examined by Mr. Proudfoot.

457 1st x int. Where did you first become acquainted with Walter Ellis, and under what circumstances?

Answer. I first became acquainted with him in Mobile; he came on board of a vessel that I was on.

2d x int. Have you ever sailed with him? and if so, state when, and on what voyage or voyages.

Answer. I have sailed with him. I sailed with him three years ago, in May, on a government schooner at Mobile harbor; they call her Light House Tender.

3d x int. During the conversation you have mentioned, did Ellis state to you why he left the north for the south? If yea, state what reason he gave.

Answer. He did tell me the reason. He told me he came down there to work; he had friends down there, and he was left here without any.

4th x int. Did he in that conversation say to you anything fur-
458 ther in regard to the loss of his clothes? If so, state fully what he said.

Answer. No, sir, he did not say anything further; but that he had lost all his clothes, and did not get anything for them.

5th x int. Did he say that he had demanded anything for his clothes of any person?

Answer. He did not. He said he had trouble to get his wages; but did not say how he had trouble to get his wages.

6th x int. Who, if any one, was present beside yourself at this conversation?

Answer. There were people there, but they had no business with our conversation. There were only two of us.

7th x int. Did Ellis tell you anything in regard to the collision, as to how it occurred? and if so, state what.

Answer. He told me the captain told him to steer for a light, and
459 that was the propeller's light; he told me it turned out to be a propeller's light. "He told me to put the helm up, and the mate told me to put it down; and if it had not been for the mate, the propeller would have run over the vessel." That is all about the collision that he told me.

8th x int. At the time of this conversation had Walter Ellis been drinking, or was he sober? and did not his conversation take place in a bar-room?

Answer. He was sober; it was about nine o'clock in the morning, just after breakfast, as near as I can recollect. It was not in a bar-room, but on a seat on the sidewalk outside of the house where I boarded.

9th x int. Are you now in the employ here, or have you promise of employment from any party or parties? and if yea, state how you are employed, or from whom you have such promise.

460 Answer. I have got employ here on board of a vessel, the Poland, before the mast. The second mate, Walter Ellis, employed me. The wages going out of port he promised me. I asked the captain on Saturday what the wages were. He said the going wages was a dollar a day for the round trip to Buffalo.

10th x int. What is the captain's name?

Answer. I don't know, sir.

11th x int. Do you know, or have you heard, who is, or are, the owners of the Poland? and if so, state who is.

Answer. I don't know; I heard the captain owned her. I heard the sailors talking about it.

12th x int. State how you came to get employment on the Poland.

Answer. The second mate knowing me, and knowing that I was here, he came where I lived, and told me he was on a vessel, and that there was a chance for me.

461 13th x int. State if Walter Ellis has at any time since you have been here mentioned to you that a lawsuit was pending in regard to the loss of the Caledonia, and that you would be required as a witness.

Answer. No, sir. I mentioned it to him; that is the way it first commenced. This was about a month or three weeks ago. I asked him what he had been doing all day? He said he had been giving his testimony about this case. I asked him if it was the case he was talking to me about in Mobile? He said it was; and he asked me if I recollected anything about what he told me? I told him I did, and he fetched me up here.

14th x int. Did he not refresh your memory by repeating over to you the statements you have now made in regard to the collision?

Answer. He never told me a thing about it till he fetched me right up in this room. I did tell Walter Ellis what I remembered about the conversation in Mobile before I came up here.

462 15th x int. State on what day you were employed by Ellis on board the Poland.

Answer. A week ago yesterday.

16th x int. When did you come up to this office?

Answer. I do not recollect the day it was on; it was about three weeks ago.

17th x int. Have you ever been employed on a vessel in any higher capacity than before the mast? if yea, state what, when, where, and what vessel.

Answer. I have on the bark Waverly, four years ago, as second mate; she was running on these lakes.

18th x int. How does it happen that you are now engaged as a deck hand?

Answer I am not acqnainted up here. I have been down south till last summer since I was on the Waverly.

463 19th x int. Was not employment on the Poland offered to you by any one as an inducement for you to become a witness in this case? or were you not told that you should have such employment in case you should testify?

Answer. No, sir. If I wanted employment, I could have got employment every day last week, if I had left the Poland; but I wanted to go with people I was acquainted with.

20th x int. Do you know the owner of the Caledonia, or Captain Bangs, or any of the officers or crew that were employed on the Caledonia?

Answer. I am not acquainted with any of them except Walter Ellis.

21st x int. Have you signed shipping articles on board of the Poland?

Answer. No, sir.

THOMAS RITCHIE.

Indorsed: Filed April 29th, 1862

WM. H. BRADLEY, *Clk.*

464 UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

Be it remembered that on the days mentioned at the head of each deposition, I, Azariah T. Galt, a notary public, duly commissioned and qualified for the city of Chicago, county of Cook, and State of Illinois, acting under and by virtue of the act of Congress entitled an act supplementary to an act to authorize notaries public to take and certify oaths, affirmations, and acknowledgments in certain cases, did cause Alexander Morrisette, George Baldwin, Samuel M. Johnson, Uriah H. Wheeler, John B. Warren, and Peter Flood, personally to appear before me at the office of Messrs. Walker & Dexter, in Chicago, in said district, to testify on the part of the respondent, in a certain cause depending in the circuit court of the United States for the northern district of Illinois, at Chicago, wherein Robert Stewart is libellant, and the propeller Ottawa is respondent. And the said Alexander Morrisette was by me, on the twelfth day of June, A. D. 1862, first duly cautioned and sworn to testify the truth, the whole truth, and

465 nothing but the truth, in the cause aforesaid. I carefully examined the said Alexander Morrisette, and he did thereupon depose and say as follows, to wit:

1st int. What is your name, age, and occupation, and place of residence?

Answer. My name is Alexander Morrisette; my age is twenty-eight; my occupation is sailor in the summer; I live in Quebec.

Mr. Proudfoot requests that Mr. George Baldwin, one of the witnesses that he was notified would be examined at the examination, leave the room during the examination of Mr. Morrisette, and Mr. Dexter and Mr. Rae refuse to direct him to leave during the said examination, and Mr. Proudfoot protests against the examination being conducted in the presence of Mr. Baldwin.

The proctors for the respondents decline to order the witness out of the room, for the reason that both the libellants and respondent have not been in the habit of separating the witnesses during the preparation of this cause for trial, and that no good reason has been suggested why the rule
466 should be deviated from in the present instance, and that the witnesses referred to are not to be examined touching the same matter.

2d int. Were you a deck hand on board of the propeller Ottawa, on the 16th day of September, 1860, when a collision occurred between the propeller and an unknown schooner?

Answer. Yes, sir.

3d int. When the collision occurred, what were you doing, and where were you?

Answer. I was between deck asleep when it happened.

4th int. What awoke you up?

Answer. The whistle.

5th int. How long after you awoke up did the collision occur?

Answer. About two or three minutes, I should think.

6th int. Had you your clothes on or off?

Answer. I had boots my off, that was all.

7th int. Do you know how long you had been in bed?

Answer. I should think about an hour.

467 8th int. Did any one sleep with you?

Answer. They were sleeping all around me.

9th int. Do you remember who was sleeping with you, whom you found awake, when you awoke up?

Objected to by Mr. Proudfoot.)

Answer. When I got awake, there was one there that was up; his name was Charles Charlon.

10th int. Did you put your boots on?

Answer. Yes, sir; when I got up I put my boots on.

11th int. Did the collision occur before you got your boots on?

Answer. Yes, sir.

12th int. How soon did you grab for your boots?

Answer. As soon as I heard the whistle I got up, and put on my boots.

13th int. What did you do before you went to bed that night?

Answer. I went to supper, and after that I don't know what I did; I went to bed.

14th int. Did you at any time during that evening go to Jim Williams,s room, or anywheres else and call him? and if so, where was it, and what
468 did you say to him? and who ordered you to say what you did, if you said anything?

Answer. I did not go at any time that evening to Jim Williams's room, or anywhere else, to call him; I did not say anything to him that I know of; I might have, I don't think I did; nobody sent me to call Jim that evening; I did not go to call him.

15th int. Did you alone, or in company with Henry, during that evening trim or light the red or green light?

Answer. If I did, I don't recollect it.

16th int. Was you, any time during that evening before the collision, at or near the pilot-house?

Answer. I should hardly know whether I was there or not round the pilot-house.

17th int. After you went to bed that evening did you get up till the whistle blew at the time of the collision?

Answer. I did not get up before the whistle blew.

18th int. When, in answer to the fourteenth interrogatory, you say you might have talked with Jim, but don't recollect at what time in the
469 evening, do you mean to be understood that you might have talked with him before the collision or after?

(Objected to by Mr. Proudfoot.)

Answer. That was after the collision.

Mr. Proudfoot objects to go on with the cross-examination of this witness, unless Mr. George Baldwin retires from the room, and that Mr. Dexter refuses to permit Mr. Baldwin to leave, Mr. Baldwin being one of the witnesses in this case; Mr. Proudfoot objects to his being present while the testimony of this witness is being taken.

Mr. Dexter states that the two witnesses are not able to testify to the same facts, and such being the case, he regards the request as frivolous, and declines to comply with it; and the proctors for the respondent here tender the witness for cross-examination to the proctor for the libellants, which he declines.

19th int. Did you that evening, before or after the collision, go forward and try to keep the red and green light in?

470 Answer. I don't remember whether I did or not.

ALEXANDER MORISSETTE.

Monday, June twenty-third.—Examination resumed, and the proctors for the respondent state to the commissioner that they have caused the witness, Morissette, to be present, in order that the proctor for the libellant might cross-examine him if he desire to.

1st x int. Where have you been since the evening of the collision, and how have you been employed? State fully.

Answer. I have been working round Muskegon; I have been up the river at Muskegon, working there all winter. I was cutting logs and driving team while I was there.

2d x int. Were you so employed from the time you left the Ottawa, up to the time when you returned to the propeller Ottawa?

Answer. I left the Ottawa at Muskegon and went to work in a saw-mill, week or ten days after. I worked a month and a half in a saw-mill, making laths first, and then I left the mill and hired myself to go to work up in the wood; and I went in, and the first thing I did was to cut logs
471 and roads, and then afterwards I drove a team of horses. In the spring I came down, and I stopped awhile in Muskegon, two or three weeks, doing nothing there; and after that I hired myself on board the propeller Foss. How long I worked on board of the Foss I could not tell; then I left the Foss and went on board of the Ottawa.

3d x int. Whose saw-mill did you work in, and who hired you to go work in the woods?

Answer. Mr. Trusedale's mill. Frank Taylor hired me to go into the woods. Frank Matthews is his name, but they call him Frank Taylor; some call him Frank Matthews.

4th x int. In what capacity did you hire on board of the Foss, and who hired you?

Answer. I hired myself as a deck hand. I forgot who hired me. It was the mate or the captain.

5th x int. What wages did you get on the Foss?

Answer. I don't exactly recollect it; but I think it was fifteen dollars a month.

6th x int. Why did you leave the Foss?

Answer. Because I would not stay on the boat any longer.

7th x int. Why not?

Answer. Because I would rather work on board of the Ottawa than the Foss

472 8th x int. When were you employed on the Ottawa? State the date you were hired.

Answer. Well, sir, I could not tell the time; after I left the Foss I stayed a day or two in Chicago till the Ottawa came, and then I went on board of her.

9th x int. State, as near as you can, when it was.

Answer. It was some time before the fourth of July, last year; I could not tell the exact time.

10th x int. Have you been employed on the Ottawa ever since that time up to the present time?

Answer. I left her last summer, or in the fall, or towards fall.

11th x int. When were you again employed on the Ottawa?

Answer. This spring, about four weeks ago, I should think.

12th x int. What had you been doing from the time you left the Ottawa, last summer or fall, up to the time you were again employed on the Ottawa, as you say, about four months ago?

Answer. Last fall I went up into the woods and worked for Mr. Jerry Ryan; this spring I was on the little drive on the Muskegon river, and then I came down from the drive; I went to working in Mr. Trusedale's mill, making laths, and then I quit there. I went to work for a man, Mr.

473 Rancers, about two days, rafting logs; then, when I got through, I went to the mouth of the Muskegon river, and stayed there till Tuesday morning, coming on Saturday night; then the Ottawa came in there, and I hired myself to work on her.

13th x int. Who hired you, and did he come after you to get you to work on the Ottawa?

Answer. The captain hired me. I don't know whether he came after me or not. The Ottawa stopped at the dock, and I went on board. He said he wanted some hands, and asked me if I would go aboard of her and work, and I said I would. Since that time I went on board of her I have been working on board of her. When I am not on board of her, I come here. I have been working on board of her, except when I come here.

14th x int. What position were you employed in at that time, and what is your present position on the Ottawa?

Answer. I hired myself as a deck hand, and am a deck hand now.

15th x int. How many deck hands were on the Ottawa at the time you were employed, four weeks ago?

Answer. I can't tell exactly how many; seven or eight, I should think.

474 16th x int. How many are necessary to make a full crew on the Ottawa?

Answer. They generally have about eight men; eight deck hands is about the crew.

17th x int. Were there not eight beside you, and did you not make the ninth?

Answer. That I don't know for certain.

18th x int. Did any of the deck hands leave shortly after you hired on the Ottawa?

Answer. Yes, sir. I guess one did leave.

19th x int. What was his name?

Ans. That I don't know.

20th x int. Was anything said to you by Captain Warren, or any other person, about the time you so hired on the Ottawa, in regard to the collision upon which this suit has been brought? If so, state what was said to you.

Answer. After I worked on board about a day, the next day the captain asked me if I knew anything about it. I told him I did not know much about. All I knew about was what I had seen and done, and no more.

21st x int. Where did this conversation take place?

Answer. We were between decks.

475 22d x int. Where was the Ottawa?

Answer. At Muskegon.

23d x int. Was any one else present who heard this conversation?

Answer. They were not exactly with us; they were around on deck. I don't know whether they heard it or not.

24th x int. Have you stated all that was said on that accasion? If not, do so.

Answer. The captain did not say much to me about it. He told me to come here and tell all that I saw and done, and to tell the truth.

25th x int. Did he not ask you if you had been to call Williams, on the evening of the collision, to go to the pilot-house?

Answer. Not that I know of.

26th x int. Do you mean to be understood that Captain Warren did not ask you that question?

Answer. I did not say so. I say I don't recollect whether he did or not.

27th x int. When the captain asked you if you knew anything about it—the collision—and you replied that you did not know much about it, what was it that you had reference to, as what you did know about it?

476 Answer. I told the captain I did not know much about it. I only knew what I saw and done, and was unwilling to tell that. He did not say that I would have to come here, but he thought I would have to.

28th x int. What did you know and see?

Answer. When the collision happened I was in bed between decks, and I have heard the whistle blow two or three minutes before the vessel strike us. When I heard the whistle blow I got up and put on my boots; when I got up I saw French Charlie beside me; I always call him French Charlie; his name is Charlie Charlow. After I had my boots on I ran into the engine-room and looked in there, and saw they were pretty well crowded there. I saw the boat was hurt some. I don't know how much. I went back and went up to the upper deck by the pilot-house. When I was there at the pilot-house, I saw Dick Brusseau was there at the wheel. Then he asked me if the boat was hurt bad. I told him I did not know, but I thought it was. He said I wish you would come here and stop a few minutes till I come back again, I want to go and see. He was not gone but a minute or two till he came back again. The time I stopped in the

477 pilot-house the boat was standing still; it was not running; then I went down and I went aft, and I and the other fellows fixed the bulwarks, and I saw the captain; he was along with us helping us. That is about all I know and saw.

29th x int. Why did you go up to the pilot-house from the engine-room?

Answer. Because I wanted to go on deck and look to see what was up.

30th x int. State how you went from the engine-room to the pilot-house?

Answer. I turned back and went to the upper deck.

31st x int. State what course you took to reach the upper deck from the engine-room.

Answer. I went back and went up the forward stairs.

32d x int. Did you then go into the pilot-house?

Answer. Yes, sir.

33d x int. Did you go into the pilot-house before, as you say, Brusseau asked you to take the wheel?

Answer. I was outside, when he asked me to go in.

34th x int. Where did you stand when he asked you to take the wheel?

478 Answer. I stood right by the pilot-house, above the stairs.

35th x int. Do you mean by the door of the pilot-house?

Answer. I mean by the pilot-house, somewhere; I don't say I was by the door, or any other place.

36th x int. Then you don't remember where you were standing?

Answer. I remember I was up the stairs, by the stairs; I may have been four or five inches from the stairs; I don't remember the inches.

37th x int. Why did you not stay and help repair the damage, when you first went to the engine-room?

Answer. Because I thought I had better go up stairs.

38th x int. Why?

(Objected to by Mr. Rae as having nothing to do with the case.)

Answer. Because I did not know whether there was anything to be done up there; I did not know whether we would go to the bottom or not.

39th x int. Did you not say that you saw the captain there at the engine-room; and would he not have ordered you on deck had your presence

479 there been necessary?

(Question objected to by Mr. Dexter as a misstatement of what the witness said. The witness said that when he went to the engine-room, after he went on deck, he saw the captain, but has not stated that he saw him the first time.)

Mr. Proudfoot says, the question is, Did you not say that you saw the captain there and, &c., and the purposes of a cross-examination are frustrated by the statements of Mr. Dexter, made in the presence of the witness, before he has answered.

(Mr. Rae objects to the question as irrelevant.)

Answer. I have said when I got up I went to the engine-room and looked and saw they were crowded there, and then went back and went up stairs on the upper deck, by the pilot-house, and Dick Brusseau was at the wheel at the same time, and Dick Brusseau asked me if the boat was hurt bad. I told him I did not know, but thought it was, and then he asked me if I would go in and stop there till he came back; he was not a minute or two gone till he came back; the boat was laying still then; then I went down aft, tried to fix her up; there I saw the captain helping to fix her up.

480 40th x int. Was the captain there when you first went to the engine-room?

Answer. He might have been there, but I did not see him the first time.

(Mr. Proudfoot requests here that Mr. Baldwin leave the room. Mr. Baldwin left the room, at the request of the commissioner.)

41st x int. At what time did you go to the pilot-house on that evening?

Answer. I could not tell exactly what time it was; it was about eight o'clock, or little before.

42d x int. Do you know of your own knowledge at what time the collision occurred?

Answer. I don't recollect exactly what time it was; it was between seven and eight o'clock, may be after eight o'clock.

43d x int. At what time did you go to bed on that evening?

Answer. I could not tell exactly; I did not look at the clock.

44th x int. How long was it after your supper?

Answer. I don't know how long; it was not very long.

45th x int. State as near you can how long it was.

Answer. We generally have our supper about half-past five or six o'clock; I went to bed about a half an hour after that, may be less, may be more.

481 46th x int. Do you usually go to bed as early as that?

Answer. Some time, when I got the chance, I often go to bed before that time.

47th x int. When was your next watch on deck?

Answer. That I don't know; I can't tell what time my watch came on.

48th x int. How do you know, then, when you ought to be on deck?

Answer. When two are on watch they stand two or four hours, and then they go to wake up two others to watch.

49th x int. How long did the whistle blow before the collision?

Answer. They might have blowed the whistle before I heard it. The first I heard it was about a couple of minutes before the collision.

50th x int. What did you do when you first heard the whistle?

Answer. I got up and put on my boots.

51st x int. Did the whistle continue to blow after the collision? if so, for how long?

Answer. I heard it, the whistle, blow after.

(Mr. Proudfoot protested against a remark made by Mr. Rae while the witness is answering this question, to the effect that the witness
482 means that he heard the whistle blow some time after the collision, thereby frustrating the cross-examination on this point. The commissioner here says that Mr. Rae addressed the remark to him, that the witness did not say that the whistle continued to blow.)

52d x int. How long after you first heard the whistle did the collision occur?

Answer. I don't know how long; it was not very long.

53d x int. State as near as you can?

Answer. That is about as near as I can tell; I don't know how long.

54th x int. Was it ten minutes?

Answer. I don't know whether it was ten, fifteen, or five minutes; all I know, I heard the whistle blow.

55th x int. Had you your boots on, at the time of the collision?

Answer. I was just putting on my boots when the whistle blew. I heard the whistle blow a minute or two before the vessel struck us.

56th x int. How long does it take to put your boots on?

(Objected to by Mr. Rae, because it is not confined to the boots the witness had on that night.)

Answer. That I can't tell how long, but it did not take very long.

483 57th x int. Is it not quite usual for propellers to blow their whistles during the evening and night, at different times?

Answer. I suppose it is, when it is very foggy.

58th x int. Do they not sometimes blow them when they pass other propellers, to indicate which side they will pass upon?

(Objected to by Mr. Rae, because they have not offered this witness as an expert, but as a common deck hand.)

Answer. That I don't know anything about it.

59th x int. Had you never heard the whistle blown at night, before this occasion?

Answer. I have heard the whistle blow when it was foggy.

60th x int. You say you have heard the whistle blow on other occasions, at night, do you?

Answer. I have heard it blow several times when it was foggy.

61st x int. Do you always, on such occasions, get up and go on deck, although it may not be your watch on deck?

Answer. Sometimes I would and sometimes I wouldn't, just as I feel about it.

62d x int. By what were you governed in your actions on these occasions, and why did you go up sometimes and at others stay below?

484 Answer. Sometimes when I heard the whistle blow that way I feel like getting up. I generally sleep with my clothes on. I thought sometimes I would get up and see.

63d x int. When the whistle is blown at night, is it nor generally blown because of foggy weather?

Answer. Yes; they generally blow it when it is foggy.

64th x int. Do they often blow it for other reasons? and if so, for what reasons?

Answer. I don't remember whether they do blow it very often; I don't know much about it.

65th x int. Why did you, on this occasion, get up as soon as you heard the whistle?

Answer. Well, the whistle waked me up and I pulled on my boots, and I thought I would go up and see; I felt like getting up.

66th x int. Did it not occur to you that the whistle might be blowing because of foggy weather?

Answer. I didn't know.

67th x int. Had you known that it was on account of fog, would you have gone up on deck?

Answer. It is just as I feel about it; I might have gone up if I knew it was that; I have got up several times before.

485 68th x int. How many hours out of the twenty-four are you obliged to be on deck, and at work?

Answer. We have got to be there two hours apiece; sometimes eight and sometimes seven of us.

69th x int. What do you do the rest of the time?

Answer. We sit down, knocking around on deck, and when we are tired of talking we go and lie down.

70th x int. Why are so many deck hands employed, if their duties are so light?

Answer. We don't run to Buffalo often, and when we go to Muskegon, in the lumber trade, we want seven or eight men to work.

71st x int. Where had the Ottawa been on this trip?

Answer. We had been to Buffalo.

72d x int. For what purpose?

Answer. We took a load of wheat, I guess.

73d x int. Do you not know positively?

Answer. I could not tell exactly whether it was wheat or corn, but I believe it was wheat.

74th x int. Did you go on the trip to Buffalo?

Answer. Yes, sir.

486 75th x int. Was the grain taken out of the vessel at Buffalo?

Answer. Yes, sir.

76th x int. Did you help to unload her?

Answer. I helped to fix the elevator in there and to sweep the hold out when they got the wheat out.

77th x int. Then, why do you say you are not positive whether it was wheat or corn?

(Objected to by Mr. Dexter, on the ground that it is entirely irrelevant whether it was wheat or corn.)

Answer. Well, I believe it was wheat; but I could not tell exactly. I don't recollect it; but I am quite sure it was wheat.

78th x int. Do you now swear that, on this trip to Buffalo, the Ottawa

had on board seven or eight deck hands, besides officers, cook, porter, &c.?

Answer. I believe we were about six or seven, I should think.

79th x int. Can you give their names?

Answer. I could not the whole of them.

80th x int. Give the names of such as you can remember.

Answer. I remember one Charlie Charlen, another "Dutch Henry," we used to call him—that is all the name I know him by; another one we used to call "Buffalo Bill;" another fellow, "Larry;" another fellow—I don't
487 recollect his name—and myself.

81st x int. Was this all?

Answer. I don't recollect any more, except myself.

82d x int. You say the whistle blew some two minutes before the collision. Did it continue to blow after the vessels collided?

(Objected to by Mr Dexter, for the reason that it conveys to the witness a wrong impression of his previous answer, as once or twice he has said the whistle blew a minute or two.)

Answer. Well, I don't know; I heard the whistle blow afterward, but don't know whether it whistled right along or not.

83d x int. State when you heard it after the vessels struck.

Answer. I heard the whistle blow after the vessel struck; I could not tell how long.

84th x int. Do you not know whether it blew one minute, or half an hour after?

Answer. I know it was not long.

85th x int. State about how long.

(Objected to by Mr. Dexter, as the witness has once stated positively he could not tell.)

Answer. Well, sir, I could not tell how long.

488 86th x int. Where were you when it blew after the collision?

Answer. I was down below aft, fixing her.

87th x int. Did I not understand you to state, in a former part of the examination, that it blew just before the collision, and continued to blow after the vessels struck?

(The proctor for the respondent objects to this question as tending to mislead the witness, as imputing to the witness language which he never used.)

Answer. No, sir.

88th x int. Will you now state whether it did continue to blow after the vessels struck?

Answer. I guess it stopped.

89th x int. What makes you think so?

Answer. Because, when I put on my boots and went aft, I did not hear the whistle.

90th x int. Did it blow till you got your boots on?

Answer. As near as I can tell, it stopped when I was putting them on.

91st x int. Where was Williams when, in your direct examination, you say you might have talked to him on the evening of the collision?

Answer. I say I might have talked with him; when we are all
489 there together, I might have talked with him as well as any other man. I don't recollect whether I did or not.

92d x int. All where together?

Answer. Sometime we were between deck and sometime aft on the upper deck. I could not say any particular place.

93d x int. Where was this?

Answer. I don't know whether it was in the evening or morning; we were aboard all the time.

94th x int. Will you swear that, on the evening of the collision, you had no conversation whatever with Williams before the collision occurred?

Answer. I can swear that no one sent me to call him up. I don't remember that I talked with him that evening or not; I might have talked with him the same as the rest.

95th x int. Will you swear you did not go to the door of his room to talk with him before the collision?

Answer. That, I don't know whether I did or not.

96th x int. Were you in the habit of going to his room to talk with him?

Answer. Not very often. Iused to go there sometimes to his room.

490 97th x int. How long, after you had taken your supper on this evening, was it before you went to bed?

Answer. I went to bed not very long after supper.

98th x int. Did you not, during that evening, trim, or help to trim, some of the signal lamps, in order to keep them burning?

Answer. Well, sir, that I don't know. I don't remember whether I did or not.

99th x int. Were you often obliged to trim, or help to trim, the signal lamps during the time of their burning?

Answer. No, sir; we had nothing to do with the lamps; the porter did that.

100th x int. Why, then, are you uncertain whether you did so on this evening?

Answer. I might have done so this evening, but I don't recollect. I sometime handed the light up to the porter.

101st x int. Did the signal lights sometimes require to be taken down and trimmed, after they had been put in their places early in the evening?

Answer. That I don't know; I never took much notice of the lamps.

491 102d x int. When you came on deck, after the collision, did you notice whether the signal lights were burning?

Answer. I do not know. I did not look to see.

103d x int. Do you know if any of the signal lights were out on that evening?

Answer. I don't remember. I did not take notice of them.

104th x int. Will you swear that you do not know whether the signal lights were all burning from the time they were placed in their proper places or not, on that evening?

(Objected to by Mr. Dexter, on the ground that the witness has twice stated he did not know.)

Answer. I could not tell.

105th x int. Did you not see one or more of them in the kitchen, or elsewhere, being trimmed during that evening?

Answer. I don't remember that I did.

106th x int. How long did you remain aft by the engine-house, when you went there from the pilot-house, after the collision?

Answer. I should think we worked at it an hour, or less.

492 107th x int. What were you doing?

Answer. Well, we had some boards there and were fixing them on the bulwarks by the side of her.

108th x int. Who were there all that time?

Answer. When I came down from up stairs, I saw the captain there helping us, and the rest of the boys were there. I don't know that they were all there, too. I did not take much notice. I was busy at work.

109th x int. Was the mate there?

Answer. Well, I did not see him if he was.

110th x int. Was Williams there?

Answer. Not that I know of.

111th x int. Where was the porter?

Answer. The porter was down below, sir.

112th x int. How do you know?

Answer. When I was coming down from above he was coming up; that's what makes me think he was below.

113th x int. You say he was going up. Where was he going?

Answer. I suppose he was going up into the kitchen or cabin somewheres.

493 114th x int. Where did you meet him; in what part of the boat?

Answer. He was going forward.

115th x int. And that is the reason, then, that you say he was below?

Answer. That is the reason I think he was below, because I met him coming up.

116th x int. Who do you understand that I mean by the porter?

Answer. We call him Tom.

117th x int. Where was the cook when you went below after the collision?

Answer. I do not know where he was.

118th x int. Was he down by the engine-room when you got there?

Answer. Well, sir, he might have been there; but I don't know. I don't remember of seeing him.

119th x int. Did you not see Williams around anywhere during all this time?

Answer. I don't recollect whether I did or not.

120th x int. Then, the only things that you have a positive recollection about are that no one sent you to call Williams to the pilot-house

494 on that evening, and that immediately after the collision you went to the pilot-house, and remained at the wheel for a few moments; is this so?

Answer. Yes, sir; that I know for certain; that I went to the pilot-house and staid there till Dick came back and took his place; and I am pretty sure that no one told me to go and wake Williams up.

121st x int. Might you not have been told to go and call Williams, and you have forgotten all about it?

Answer. I think I would recollect it if any one at that time had told me to go and wake him up.

122d x int. Are you sure that, when you were in the pilot-house as you say you were, it was not before the collision instead of after?

Answer. It was after the collision when I was in; the boat was laying still when I was in there.

123d x int. While you were busy aft, by the engine-house, did you at any time see the mate there?

Answer. I don't remember whether I did or not.

124th x int. Did you go to bed again that night?

Answer. Well, sir, I don't remember whether I did or not.

125th x int. Were you ever employed in the river trade? If so, state on what river and on what vessels.

495 Answer. I worked in Grand river on a boat in the Nebraska.

Redirect examination by Mr. Dexter.

1st redirect int. Did you ever have anything to do with cleaning, putting the oil in, or fixing the signal lamps on the Ottawa; or was all you ever had to do with them to bring them when the porter directed?

Answer. I don't remember of ever cleaning, putting oil in, or fixing the signal lamps on the Ottawa; all I did with them was to bring them when the porter directed.

ALEXANDER MORISSETTE.

And the said George Baldwin was by me, on the twenty-fifth day of June, A. D. 1862, first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid. I carefully examined the said George Baldwin, and he did thereupon depose and say as follows, to wit:

496 1st int. What is your name, age, occupation, and place of residence?

Answer. My name is George Baldwin, my age is fifty-three, my occupation is a mariner, I live in Chicago.

2d int. Were you on board of the propeller Ottawa on the 16th of September, 1860, at the time of the collision with some unknown vessel? And if so, what was your position aboard of her?

Answer. I was; I was mate.

3d int. At the time the collision occurred whose watch was on?

Answer. The captain's.

4th int. Where were you, sir?

Answer. In bed.

5th int. What awoke you up?

Answer. The noise of the collision.

6th int. What did you do as soon as you awoke up?

Answer. I got up.

7th int. What did you do after you got up?

Answer. I went aft.

8th int. State what you did next.

Answer. When I got to the corner of the cabin, I saw the vessel's
497 sails, and went to call the second engineer, and then I went aft; after I called him I went below between decks.

9th int. What did you go there for?

Answer. To see what damage was done.

10th int. Whom did you first see when you went below?

Answer. Well, I don't know who I saw first.

11th int. Who did you see?

Answer. I saw the engineer, porter, one or two deck hands, and, perhaps, one of the firemen. I don't know who all I saw.

12th int. Was the master dressed? And if so, how was he dressed?

Answer. He had a Kossuth hat on, and a brown coat. He was dressed.

13th int. Boots on?

Answer. He had boots or shoes on.

14th int. Anything in his hand?

Answer. I don't know whether he had a lamp in his hand or not.

15th int. Did you see the steward of the boat below, and was anything the matter of him?

(Objected to by Mr. Proudfoot.)

498 Answer. I saw him; there was something the matter of him.

16th int. What?

Answer. His foot was hurt; that there may be no mistakes, this man shipped as porter, but was sometimes called porter and sometimes steward.

17th int. How long did you stay below?

Answer. Well, three or four minutes.

18th int. What did you there?

Answer. I went on deck after a hammer, nails, and saw; when I got them I went below again.

19th int. Well, when did you finally go on deck?

Answer. When the engine was ready to start.

20th int. Were you told to go on deck, if so, who told you?

Answer. Yes, I was told to go on deck by the captain.

21st int. When you went on deck where did you go to?

Answer. I went forward to the pilot-house.

22d int. How long was this after the collision that you went to the pilot-house?

Answer. It might have been twenty to twenty-five minutes, I could not say; somewhere in that neighborhood.

499 23d int. Was that the first you went to the pilot-house after the collision?

Answer. I passed under it down stairs.

24th int Did you go to or at the pilot-house, before twenty minutes after the collision?

Answer. No sir.

25th int. When you got to the pilot-house, who did you find there in the pilot-house?

Answer. Norwegian Jim.

26th int. You mean James Williams?

Answer. I mean Jim Williams, that is the name I know him by.

27th int. When you got to the pilot-house, was the pilot-house door open or shut?

Answer. It was shut.

28th int. When you arrived at the pilot-house, how was the lights, burning or not?

(Objected to by Mr. Proudfoot, because he does not ask what lights.)

Answer. They were burning.

29th int. What lights were burning?

Answer. The signal lights.

500 30th int. Where was the bright light when you arrived at the pilot-house?

Answer. On top of the pilot house.

31st int. When you went to the pilot-house, what did you do?

Answer. I kept a look-out.

32d int. Did you see any vessels, and if so, how soon after you went there did you see such vessels, and what did you do?

Answer. I saw a vessel about twenty minutes after I went there; it was a barque, a three-masted vessel; what they call a barque here; I blew the whistle and told the man at the wheel to put his wheel hard to port.

33d int. Was that the first time you blew the whistle after you went to the pilot-house?

Answer. Yes, sir.

34th int. During that time, from the time you went to the pilot-house to the time you saw this barque and blew the whistle, who was in the pilot-house beside Jim?

Answer. Not anybody but Jim and and myself, while I was there.

501 35th int. At the time this barque passed you or came along, were your signal lights out or in?

Answer. I don't know how to answer that; I suppose any bright light would be called a signal light; the head light was out.

36th int. When the light went out what did you do?

Answer. I hung a globe lamp forward of the pilot-house.

37th int. Did you do anything else about the light that went out?

Answer. Yes sir; I had it lit again.

38th int. Where was it when it went out?

Answer. On top of the pilot-house.

39th int. In its usual place?

Answer. Yes, sir.

40th int. Who lit it; and did they take it out of its place to light it; or did they light it on top of the pilot-house; and how was it lighted?

Answer. The cook lit it; they took it out of its place to light it; they took it into the kitchen to light it.

41st int. Did they leave anything in its place?

Answer. They left a globe lamp hanging forward of the pilot-house.

502 42d int. How long had it been out, when you called out to have it lighted?

(Objected to by Mr. Proudfoot.)

Answer. Oh! not a half minute.

43d int. How long had it been out when this barque passed by?

Answer. Well, I couldn't say; they were away lighting it at the time.

44th int. When the barque passed by what did you do?

Answer. I did not do anything just at present.

45th int. Did you remain in the pilot-house?

(Objected to by Mr. Proudfoot.)

Answer. No sir.

46th int. What did you do?

Answer. I came out on deck.

47th int. When you came out did you say anything to Jim, and if so, what did you say?

Answer. When I came out and shut the door Jim said, hell, or damn, don't shut it; that he wanted to get out; I told him to look out for himself, when I went out and left the door open.

48th int. Was this the first time you were out of the pilot-house, after you went in it after the collision?

Answer. No sir.

503 49th int. How often had you been out before that, after the collision, up to that time?

Answer. Once.

50th int. From the time you went into the pilot-house, till you went out that once, had the pilot-house door been open or shut?

Answer. Shut.

51st int. When you went out that time, how far did you go from the pilot-house?

Answer. I went to the after gangway.

52d int. How long were you gone?

Answer. Well, I could not say; I was gone long enough to go one hundred feet and back again, at a pretty sharp walk.

53d int. What did you go for?

Answer. To ask about the course—how we were to steer.

54th int. At the time you went aft to get the course, was the pilot-house light burning on the pilot-house?

Answer. Yes sir.

55th int. Did you at any time before or after the collision on that evening, go forward either alone or with the captain and deck hands, or with

504 the captain alone, or with the deck hands alone to trim lights, and if so, when and where, and what lights?

Answer. No sir.

56th int. When the barque passed you did you hear any one on board of her say anything about lights?

Answer. No sir.

57th int. When you told Jim to look out for himself when the barque passed you, was that the first and only time on that evening you told him to look out for himself?

Answer. Yes, sir.

58th int. Did you see Brusseau at all at the pilot-house when you went there?

Answer. No, sir.

59th int. Was Brusseau there at all, all the time you were at the pilot-house?

Answer. I don't remember seeing him; he was there about an hour, from twelve to one o'clock; from eight to twelve his watch lies off; from twelve to four his watch is on.

60th int. Have you ever served as a look-out on board of steamers?

Answer. Yes sir.

505 61st int. How long have you served on steamers and sail vessels as a look-out?

Answer. About twenty-five years.

62d int. What is the duty of a look-out?

Answer. To look out for lights and vessels.

63d int. Where did you serve as look-out on board of the propeller Ottawa? (Objected to by Mr. Proudfoot.)

Answer. At the pilot-house.

64th int. Why did you select the pilot-house?

Answer. Because it is the best place.

65th int. How do you know it is the best place?

Answer. Because I have tried it, the pilot-house, and know it to be the best; I have tried all other places, and know it to be the best.

66th int. Why is the pilot-house the best on board of the propeller Ottawa?

Answer. Because it is higher up than any other place, and you have an unobstructed view there.

67th int. How is it situated; is it forward or aft?

Answer. Forward.

68th int. Have you ever known captain Warren to serve as a lookout on board of the propeller Ottawa?

506 Answer. Yes, sir.

69th int. Have you ever known him, during such service, to be away from his post?

Answer. No, sir.

70th int. Had you opportunities of observing him to know?

Answer. Yes, sir.

71st int. The propeller Ottawa is a freight propeller, is she not?

Answer. Yes, sir.

72d int. When the captain or mate serves on board the Ottawa as a look-out, have they anything else to do but to look out?

Answer. No, sir.

73d int. Since you were summoned to come down to give your testimony in this case, have you had any conversation with any of the proctors in this cause other than Mr. Dexter and Mr. Rae?

Answer. Yes, sir.

74th int. Who?

Answer. With Mr. Proudfoot.

75th int. Where was it, what did he do, and what did he say to you?

507 Answer. It was on Randolph street; he put his hand on my shoulder and said to me to step to one side, he wanted to speak with me. He asked me if I knew anything about Norwegian Jim or about his case. I told him I did not, and did not want to. He said Jim was in a bad fix or bad situation, and if his friends did not come to sustain him he stood a chance to go to the State prison. I told him I did not know anything about it and did not want to know; that is all.

Cross-examination by Mr. Proudfoot.

1st x int. At what time did you go to bed on the night of the collision?

Answer. Somewhere shortly after seven. I could not say exactly.

2d x int. How long was this before the collision occurred?

Answer. I don't know, sir.

3d x int. Can you not approximate to the time?

Answer. No, sir, I can't do it. I could not tell the time I turned in or turned out, not seeing any time. I can't guess time.

4th x int. Were you asleep at the time the collision occurred?

Answer. I was, sir.

508 5th x int. Did you have your clothes on or off?

Answer. On.

6th x int. Do you usually go to bed with your clothes on?

Answer. Always when running; when outside in the lake.

7th x int. At what time was your watch on deck to come on?

Answer. Eight o'clock.

8th x int. Do you often go to bed at that hour in the evening, it being so near the time of your watch on deck?

Answer. Well, if I feel sleepy I do; if I don't, I don't.

9th x int. Did you feel particularly sleepy on this evening?

Answer. I felt kind of sleepy, yes.

10th x int. Had your duties been such on this day that you were more than usually fatigued?

Answer. No, sir.

11th x int. Did you have your boots on while lying down?

Answer. Yes, sir.

12th x int. Was it dark when you went to your berth?

Answer. Well, I can't say that it was right dark; it was after sundown. It was pretty gray any way.

13th x int. What time did you take your supper on that evening?

509 Answer. I could not say. We generally take supper between five and six; we have no regular time to the minute; at all times between five and six.

14th x int. At what time did your last watch on deck expire?

Answer. Six o'clock.

15th x int. How then could you take supper between five and six?

Answer. After the captain eats his supper he relieves me, if it is my watch on deck; if it is his watch I eat my supper and relieve him.

16th x int. Did the captain relieve you on this evening before six?

Answer. He relieved me after supper; I could not say the time; somewhere between five and six.

17th x int. Will you swear that on this evening the captain came to the pilot-house and took his place there on watch before you left to go to your supper?

Answer. I swear he came on deck. I cannot swear that he came to the pilot-house or not. I don't know.

510 18th x int. What did you do, and where were you during the time that elapsed after you had eaten your supper and the time you went to your berth?

Answer. After I eat my supper I lit my pipe and went and sat on the rail on the after end of the cabin, and talked with second engineer and others.

19th x int. What was the second engineer's name?

Answer. I think his name is Fred, and the other name Pennoyer. We hardly ever know a man's second name.

20th x int. Who were the others you were talking to?

Answer. I don't know, there were two or three others.

21st x int. How long did you sit there smoking and talking?

Answer. I might have sat there twenty minutes.

22d x int. What did you do then?

Answer. I took a turn down below, and then came on deck again. I talked with the second engineer a few minutes more, and then went to bed; he went to bed also.

23d x int. Where did this last conversation take place?

Answer. The same place as the first one.

511 24th x int. Where was your berth?

Answer. In the hall, on the starboard side, aft the state-room, next to the hall.

25th x int. About where on the Ottawa is this state-room?

Answer. Well, I should suppose it was fifty feet from her stern; I don't know for certain; it is about the middle of the cabin. I don't know how long the boat is?

26th x int. Is it more than fifty feet from your state-room to the stern of the boat?

Answer. Yes, sir; it must be in the neighborhood of one hundred feet; I could not say exactly.

27th x int. Then you think the Ottawa is about one hundred and fifty feet long?

Answer. Somewhere in that neighborhood.

28th x int. You say you were awakened by the noise of the collision, was that the first thing you heard?

Answer. Yes, sir.

29th x int. Did you immediately get up?

Answer. I did.

512 30th x int. And go at once to the pilot-house?

Answer. No, sir.

31st x int. Where did you go, and what did you do?

Answer. I went to the after end of the cabin and saw the vessel's sails, and then went back.

32d x int. What did you go back for, and where did you go back?

Answer. I went back to my room to call the second engineer.

33d x int. Did the second engineer sleep in the same room with you?

Answer. He did at that time; that was not his room but he was sleeping there at that time.

34th x int. Where is Fred Pennoyer now?

Answer. I think he is dead now, I am not certain; he had the consumption.

35th x int. Did you wake him up and tell him of the collision?

Answer. I awaked him up and told him to get out of that; that there was a schooner into us.

The witness, on hearing this testimony read over to him, says, in
513 answer to the 35th x int., he meant to say, he went and called him, but did not wake him, as he was not asleep.

36th x int. Was the blow, when the vessel struck, a violent one?

Answer. Well, it made considerable noise cracking.

37th x int. Sufficient to wake you out of a sound sleep, was it?

Answer. I don't know whether it was a very sound sleep, but I was asleep.

38th x int. And Mr. Pennoyer then slept through it all, did he?

Answer. No, I guess not.

39th x int. Did you not just testify that you went back and waked him up and told him to get out of that, &c.?

Answer. I went and called him and told him to get out of that; I suppose he was not asleep.

40th x int. When you had called the second engineer, what did you then do?

Answer. I went aft and down below, and looked to see about the damages.

514 41st x int. State who you found there?

Answer. I found the engineer there and two or three others.

42d x int. Give the names of all of them you found there?

Answer. I don't know any one's name but the captain and engineer. It is very seldom we know the names of the crew; they go by nick-names.

43d x int. Did you not, in the direct examination, say you saw the engineer, porter, and one or two deck hands, and perhaps one of the firemen?

Answer. I had not seen the porter at that time.

44th x int. When did you see the porter?

Answer. After I had looked around outside of the boat to see if the hull was hurt.

45th x int. Where did you see him?

Answer. He was down aft, near the engine.

46th x int. How long was this after you first went down to the engine room?

Answer. It might have been three or four minutes; three minutes, I think.

47th x int. How long did he remain there?

515 Answer. I don't know, sir, anything about it.

48th x int. You say in your direct examination that the captain had a Kossuth hat and a brown coat, and boots or shoes on, what attracted your attention at this particular time to his dress, and will you swear he was so dressed?

Answer. Well, because, I believe, he had but two coats along with him, a light and a dark one; I never saw any other.

49th x int. Then it was from this fact that you swear he had on his brown coat, was it?

Answer. Yes, sir.

50th x int. Where was he at the time you speak of?

Answer. Down near the engine.

51st x int. What was he doing?

Answer. He was looking around.

52d x int. Did he say anything to you, or you to him?

Answer. He did. He told me to get the hammer and nails, and fix up the break as well as I could.

516 53d x int. Where did you go for the hammer and nails?

Answer. To the office.

54th x int. How did you have to go to get to the office?

Answer. I had to go up on deck.

55th x int. How did you have to go to get up on deck?

Answer. I went up a pair of stairs.

56th x int. State where those stairs were?

Answer. Right underneath the pilot-house.

57th x int. When you got on deck at the head of the stairs, did you look into or stop for anything at the pilot-house?

Answer. No, sir.

58th x int. Did you take any notice as to who was there? If so, who?

Answer. I did not.

59th x int. Did you, at that time, take any notice of the signal lamps? If so, state how you found them?

Answer. I did of the red one; the other one I could not see where I was; the red one was burning.

517 60th x int. How did you happen to notice the red light at this time?

Answer. It was right above my head.

61st x int. Where were you when, as you say, the red light was just above your head?

Answer. I was in the gangway, alongside of the cabin.

66th x int. How did it happen that your attention was drawn to the light?

Answer. I could not very well go along the gangway without seeing it, unless you held your head down.

67th x int. Would you not be obliged, in order to see it, to lean over the rail?

Answer. No, sir.

68th x int. Where was the red light placed at this time; how far back of the pilot-house?

Answer. Well, I can't tell how far; it was about two-thirds the length of the cabin aft.

69th x int. Was it aft of the end of the boom?

Answer. We don't use anything like a boom.

70th x int. Did you get the hammer, nails, &c.?

Answer. I did.

518 71st x int. How long did it take you to get them?

Answer. About three minutes, I should think.

72d x int. Did you then go back the same way you came?

Answer. Yes.

73d x int. In going back, did you look into the pilot-house to see who was there, or did you say anything to those who were in the pilot-house?

Answer. I did not look in. I don't know if any one was there; there might have been two or three there.

74th x int. When you went below did you employ yourself in repairing the damage done to the hull or the bulwarks of the Ottawa?

Answer. No, sir.

75th x int. How did you employ yourself?

Answer. I took a look around both sides of the engine to see what damage was done.

76th x int. Up to this time had you seen nothing of Williams?

Answer. Not that I know of, I hadn't.

519 77th x int. Then you didn't help to repair the damage, you merely looked around, did you?

Answer. That's all. I picked up a few pieces of board and threw them aside; I suppose that is not repairing.

78th x int. What did you do with the hammer, nails, and saw, that you went after?

Answer. I brought them down aft and left them there; I don't know whether I gave them to the captain or laid them down.

79th x int. You say you then went up to the pilot-house, how long was this after the collision?

Answer. It must have been twenty or twenty-five minutes.

80th x int. Did you go immediately into the pilot-house?

Answer. Yes, sir.

81st x int. Did you, before going into the pilot-house, examine all the signal lights and find them burning?

Answer. I looked at the head light, and then went into the pilot-house and saw the other two; could not see the other two without climbing
520 up on deck, till I went into the pilot-house.

82d x int. You say when you got to the pilot-house you found Williams there. You also say that you had not seen him around the boat before that. Do you know how long he had been in the pilot-house?

Answer. No, sir.

83d x int. He may have been there for an hour, and you not know it; is that so?

Answer. I don't think that is so. I don't think he went there before his watch came on; it is not very likely.

84th x int. Why not?

Answer. Because it is not fashionable. When a man stands his own watch he has no business to stand on another man's watch. His watch did not come on till eight o'clock; that is the reason I think he was not there.

85th x int. Is this your only reason for thinking so?

Answer. Yes, sir.

86th x int. And yet you say that the captain often relieves you before your time is up; and you do the same with him?

521 Answer. It is generally fashionable at meal times for him to relieve me, and me him.

87th x int. Could you see the bright light while standing in the pilot-house?

Answer. No, sir; you can't see the light itself, you can see the reflection of it.

88th x int. When you went in the pilot-house, who else was in there, or around the pilot-house besides Williams?

Answer. Not anybody but me and him.

89th x int. How long after you went into the pilot-house was it that this barque you speak of came by?

Answer. Fifteen or twenty minutes.

90th x int. How near to each other were the two vessels when they passed?

Answer. I don't know; couldn't tell. Near enough to hear a man halloo. It was dark; couldn't tell the distance.

91st x int. How long was it before she passed you that you hung a globe lamp on top of, or on the foreward part, the pilot-house?

Answer. It was only a very short time; I couldn't say how long.

522 92d x int. Was it five minutes?

Answer. I should think not.

93d x int. Who hung the globe lamp there?

Answer. I did.

94th x int. Where did you get it from?

Answer. I took it from one of the men on the forecastle; I don't know who.

95th x int. What was he doing with it?

Answer. He was carrying it to the captain, he said.

96th x int. Describe what kind of a lamp it was.

Answer. A common glass globe lamp, that you can carry in your hand anywhere.

97th x int. Could such a lamp remain burning, on such a night, in that position?

Answer. Yes, sir.

98th x int. Why did you blow the whistle when the barque passed?

Answer. So as to let him know we were coming. I saw his light, and did not know whether they saw ours.

523 99th x int. How long before you passed had you seen the light?

Answer. A very short time. I couldn't say how long.

100th x int. Was it three minutes?

Answer. I suppose it was three or four minutes from the time I first saw it till it was passed.

101st x int. How then did it happen that you passed in such close proximity, and you were obliged to put your wheel hard to port the moment before passing?

Answer. I had the wheel put to port before we came to the vessel, because a vessel heavily laden is apt to fall off and come to.

102d x int. Had the vessel passed you when you left the pilot-house?

Answer. No, sir.

103d x int. What positions did the vessels occupy toward each other when you left?

Answer. The vessel was a little on the port bow.

104th x int. Did you consider that there was any danger to be apprehended?

Answer. Well, yes; some.

524 105th x int. Why did you leave the pilot-house, then?

Answer. I wanted to go and see what they were going to do.

106th x int. Where did you go to see?

Answer. On the port bow.

107th x int. Have you not testified that you remained in the pilot-house till the barque passed you, and then you went out on deck?

Answer. No, sir.

108th x int. Why did you remark to Jim that he must look out for himself?

Answer. When I went out Jim told me to leave the door open so that he might get out if they run into him. I then told him to look out for himself.

109th x int. How long before the barque passed you did the bright light go out?

Answer. I don't know, sir.

110th x int. Who ordered it to be relighted?

Answer. I did.

111th x int. Whom did you order?

Answer. I don't know that I ordered any one in particular. I call

525 out and the word was passed, and the cook came and got it; the other man was hurt.

112th x int. Where did you stand when you sung out?

Answer. I could not say exactly where I stood. I generally keep moving when I am on deck.

113th x int. Were you on deck at the time, or in the pilot-house?

Answer. I was in the pilot-house.

114th x int. Didn't you just say that you did not exactly know where you stood; that you were moving around when you were on deck?

(Objected to by Mr. Rae.)

Answer. Well, I don't know where I stood; whether behind, in front, or before the wheel. When a party is on the look-out he is said to be on deck, whether in the pilot-house or anywhere else.

115th x int. How did you ascertain that the bright light was out?

Answer. By the reflection from the night-hawk, or a big, large ball in front.

116th x int. What caused it to go out?

526 Answer. I can't tell, without it was a very heavy gust of wind; that is the only reason I have.

117th x int. Did the lights often go out in that way?

Answer. No, sir.

118th x int. Will you swear that the bright light had been burning up to the moment you called out to have it relighted?

Answer. Well, I can't tell anything about it before I came on deck; after I came on deck it was burning till I called out to have it relighted.

119th x int. You say it was taken into the kitchen to be trimmed. How do you know that?

Answer. I suppose it was. The cook came after it, and the lamp-room was torn out.

120th x int. When was it that you went to the after gangway to get the course?

Answer. Directly after I went on deck. I went in to see how the vessel was steering. I asked him how he was steering, and he said he didn't know; then I went to get the course.

121st x int. You say that when you went aft for this purpose the pilot-house light was burning; what light do you mean was burning, and
527 how do you know?

Answer. I mean the head light; I could see it.

122d x int. Could you see the light or the reflection?

Answer. The reflection.

123d x int. You say the pilot-house is the best place on board of the Ottawa for look-out; is not the view obstructed by the sashes and by the windows being closed?

Answer. No, sir.

124th x int. During your watch, are you always forward on the look-out?

Answer. That is the calculation, to be there. Yes.

125th x int. I do not ask as to the calculation, but are you always there on the look-out during your watch?

Answer. I can't answer.

126th x int. Why not?

Answer. Well, I sometimes have occasion to go after water to drink, or to make water; on those occasions I am not there; the

127th x int. If anything goes wrong on the boat during your
528 watch, are you not expected to look after and tend to it?

Answer. We don't have things go wrong; we have all them put to right before we go out.

128th x int. I have heard of accidents happening in heavy weather, by the force of the waves or other causes; would you not, during your watch, look after damage caused in this way?

Answer. Yes; somebody would have to do it. It only happened twice with us; on those times I was called upon. It was the captain's watch, and he staid there.

129th x int. Have you not stated that on the evening of the collision you went aft to get the course?

Answer. I did, sir.

130th x int. If your business was that of look-out, what right have you to leave your post, even for that purpose?

Answer. Because the boat had been stopped and had been drifting for some minutes, and she might have run on a shore in twenty minutes.

131st x int. Will you now state whether you have not heard the
529 hands on board of the Ottawa talking about the lights having been out on the evening of the collision, and do you not know that that was the fact?

Answer. No, sir; I did not hear them, and I don't know it to be the fact.

132d x int. How long had the signal lamps, which were on the Ottawa on the night of the collision, been in use?

Answer. I don't know anything about them, how long they had been in use.

133d x int. How long have you been employed on the Ottawa?

Answer. This is my third season.

134th x int. Have you not lately changed the lamps of the Ottawa; if so, state when?

Answer. No, sir; it is once a year; they were changed last March a year ago.

135th x int. Why was the change made?

Answer. They were changed for the better, I believe. I don't know that they are any better; I don't believe they are as good.

136th x int. Please explain exactly how the old red and green lamps were arranged; how they were placed on deck, and the kind of box in which they stood.

530 Answer. They stood in a kind of wooden screen, so arranged that when the lamp is placed in it, throws a light forwards and out sideways, but does not show in deck and aft; they are so arranged that a vessel coming quartering can only see the head light and the light of the side they are on; the top of the lamp is cornered close with iron.

137th x int. Has not the position of the red and green lights been changed on the Ottawa since the collision occurred?

Answer. They have, sir; they have been shifted further forwards, but on the same side.

138th x int. Why was this change made?

Answer. They used to be in the way of the fore-sheet, which would sometimes capsize screen, lamp, and all.

139th x int. Were not the old lamps out of repair, and did they not have holes in them?

Answer. No, sir; they had holes enough in them to let out the smoke, as other lamps, and no more.

531 140th x int. Do you not often blow the whistle at night, and generally in passing other propellers; do you not so?

Answer. No, sir; not without it is foggy; I don't recollect blowing but twice when vessels passed us.

141st x int. Do you not blow it under circumstances such as those when you passed the barque?

Answer. Not without a vessel is coming too close; then I blow it, to let them know we are around.

142d x int. State the circumstances under which the conversation which you relate as having occurred with Mr. Proudfoot took place; state the hour of the day, and where it occurred.

Answer. I could not state the hour or the day. It was when I was coming down here from dinner, on Randolph street, near Greenbaum's and Son's hardware store.

143d x int. Did you not state that you were coming to Mr. Dexter's office to give your testimony, and did not I reply you were an hour too early; and did you not then reply that he told you to be there at one o'clock?

532 Answer. I don't know that I said I was coming here to give testimony. I did not then know what I was coming for. I was told to come here at one o'clock. I don't know that you said I was an hour too early. I said I was to be there at one o'clock.

144th x int. In reply to your remark that you did not know anything about Jim's case, and did not want to, did not Mr. Proudfoot say that Jim had sworn there were no lights burning, and that if he had told the truth, his friends ought to come forward and sustain him, otherwise he might be sent to the penitentiary; and did you not reply, you knew very little about the lights, because you were in bed at the time of the collision?

Answer. I don't think there was lights mentioned; nothing said about lights that I recollect.

145th x int. Will you swear that nothing was said about lights on this occasion?

Answer. I would.

146th x int. Did Mr. Proudfoot state to you where he was going and for what purpose?

533 Answer. He did say he was going somewhere, I don't recollect. I did not care.

147th x int. Did not Mr. Proudfoot tell you that he was going down on board of the Ottawa to look around, and that he would be back at two o'clock, the time set for your examination?

Answer. Well, I don't know whether he told me he was going on board of the Ottawa or not. He told me he was going somewhere.

Re-direct examination by Mr. Rae.

1st re-int. Is there any difference between the whistle for a fog and for a passing vessel?

Answer. Yes. When we blow the whistle in a fog, it is a short, tooting whistle; when for a passing vessel, it is a long whistle—a half minute or a minute.

GEO. BALDWIN.

534 And the said Samuel M. Johnson was by me, on the twenty-eighth day of June, A. D. 1862, first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, I carefully examined the said Samuel M. Johnson, and he did thereupon depose and say as follows, to wit:

1st int. What is your name, age, occupation, and place of residence?

Answer. My name is Samuel M Johnson; I am of lawful age; my occupation is wholesale grocer and shipping merchant; I live in Chicago.

2d int. Do you know Martin Ryerson?

Answer. Yes, sir.

3d int. A friend of yours?

Answer. Yes, a friend.

4th int. Was you on board of the propeller Ottawa on Monday, the twenty-sixth of May, A. D. 1862?

Answer. Yes, sir.

5th int. Where were you, and who were with you?

535 Answer. I was in a state-room joining the cabin; Mr. McMullen was with me.

6th int. What were you there for?

Answer. I was there by request of Mr. Ryerson and Mr. Dexter, to hear what some man had to say; they called him Jim Williams.

7th int. Did you hear any conversation with Jim Williams, and if so, who was present, and where did the conversation take place?

Answer. I heard conversation between a fellow they called Jim, Mr. Rae, Mr. Dexter, and some other man; I don't know his name; they called him "Mac;" captain came in after the conversatien commenced; the conversation was held in the cabin of the Ottawa.

8th int. Give the whole of the conversation.

Answer. The substance of the conversation was this: Jim said he would be a hard witness against the boat, and he thought it would be best for him to go away, clear out, and if they would give him three hundred dollars he would go away; somebody said that was pretty high; and he finally

536 said he would go away for two hundred and fifty dollars; I could not say who it was that said it was pretty high; it was either Mr. Rae,

Dexter, or Mac. About this time in the conversation the captain came in; Mr. Rae says to the captain, that this man, Jim, tells things that you have never let us know anything about; that you had women on board, and neglected your duty, and Mr. Rae asked the captain how that was; the captain said it was all a lie; Mr. Rae then says to the captain, that this man wants two hundred and fifty dollars to go away and not appear, or else he will swear to these statements, or something to that effect. The captain said he would not give him a cent, that it was all a lie and he dare not swear to them; they broke up in a general row, and Jim said he would go and get another witness to swear to the same thing he would.

9th int. When Jim said that he was a hard witness and that they had better give him three hundred dollars to go away, did he state who made this proposition first to him, or did he state that he made the propo-
537 sition first himself?

Answer. In the conversation, Mr. Rae or Mr. Dexter said they wanted to hear what he had to say, what his propositions were, and his proposition was three hundred dollars to go away, and finally he got down to two hundred snd fifty. He stated in conversation that he did make that proposition first.

10th int. Did you hear any one say that they could offer him nothing to go away or swear falsely; all they wanted was for him to tell the truth; and if such language was used by any one, who used it?

(Objected to by Mr. Proudfoot as leading and otherwise improper.)

Question withdrawn.

10th int. Did you hear any statements made by any one on Mr. Ryerson's side, if so, who made them, and what was said other than what you have already testified?

Answer. Mr. Rae said he could not offer him anything, and he did not want him to tell anything but the truth.

11th int. Did Jim make a statement to the captain of what he was going to prove?

538 (Objected to by Mr. Proudfoot.)

Answer. Yes, sir; I don't remember what he said.

12th int. What did the captain say after he heard it?

(Objected to by Mr. Proudfoot.)

Answer. The captain said it was all a lie.

13th int. Did you understand when you went there to listen to what Jim had to say that Jim was going to make a proposition for money, and did you understand from Mr. Ryerson, or Mr. Dexter, or Mr. Rae, that they were going to give him any? State all you know about it.

(Objected to. Withdrawn.)

13th int. What did you understand was to be programme when you went there to listen?

Answer. I understood from Mr. Ryerson's party that there was some fellow that the other side had probably hired to swear for them, and that he had made a proposition, or they had intimations that he would swear for them, or go away, if they would pay him more than the other parties;
539 they said they were not going to pay him anything; that they wanted to see whether any person was paying him, and what the fellow was.

14th int. Did you understand that Mr. Dexter was to come in at a given time, and that the captain was to come in at a given time, during the conversation?

(Withdrawn.)

Cross-examination by Mr. Proudfoot.

1st x int. How did you know Jim's name?

Answer. They sometimes called him Jim Williams and sometimes Jim.

2d x int. Who called him so?

Answer. Dexter, Rae and Mac.

3d x int. From the state-room in which you were concealed, could you see the different faces of the different persons who were present, as engaged in the conversation?

Answer. I could not.

4th x int. How did you know who was speaking at different times?

Answer. I knew Dexter and Rae by their voices, and Mac sat on
540 one side and Jim on the other, a little way apart; I could tell by the conversation who was speaking.

5th x int. Could you distinctly hear every word that was said?

Answer. Yes; the state room door was ajar, and the window over the door was open.

6th x int. Have you stated fully and particularly every remark that was made on this occasion, by each individual who took any part in said conversation?

Answer. I have stated the substance of the general conversation as I gathered it at that time; I have not stated it fully, and could not.

7th x int. Were not many remarks made during those portions of the conversation which you have related, by all of the different persons concerned in said conversation, which you have not mentioned in your testimony?

Answer. There were remarks made that I have not related; lots of them; but not to amount to anything.

8th x int. You say that Mr. McMullin was in the state-room with
541 you, do you know if he was there for the same purpose as yourself?

Answer. He told me he was there to hear what somebody said.

9th x int. In answer to the 12th direct interrogatory, you say you understood from Ryerson's party, that there was some fellow that the other side had probably hired to swear for them, who told you this? give the names or name of your informer?

Answer. My impression is it was Mr. Dexter, but I will not be certain whether it was he, Mr. Rae or Mr. Ryerson.

10th x int How long a time did this affair continue; I mean how long did the conversation last on the boat?

Answer. I should say three-quarters of an hour; might have been a little more or less.

SAM'L M. JOHNSON.

Re-called and direct resumed, June 30th.

1st int. During the conversation on the Ottawa, that you have testified about, and while the $250 or $300 was being talked about, did Jim
542 make any other remark in addition to what you have stated, and if so, what?

Answer. He stated that he could not afford to take less than $250, as he could get from the other parties one dollar and a half a day; I believe that is all I recollect of; this occurred when they were trying to beat him down.

1st re-x int. Did you understand him to say what he was getting a dollar and a half a day from the other parties for?

Answer. I suppose it was to remain here as a witness.

2d re-x int. Did his remarks lead you to that supposition?

Ans. Yes, it did; his remarks lead me to that supposition.

S. M. JOHNSON.

543 And the said Uriah H. Wheeler was by me, on the 30th day of June, A. D. 1862, first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid; I carefully examined the said Uriah H. Wheeler, and he did thereupon depose and say as follows, to wit:

1st int. What is your name, age, occupation, and place of residence?

Answer. My name is Uriah H. Wheeler; my age is thirty-seven; my occupation lumber merchant; I live in Chicago.

2d int. Do you know Martin Ryerson?

Answer. I do

3d int. Please state whether you are a friend of his.

Answer. I am.

4th int. Were you on board of the propeller Ottawa on Monday, 26th of May, 1862, at the time of a conversation between Dexter, Rae, and others; and if yea, at whose request did you go there?

Answer. I was on board of the Ottawa at such conversation at that
544 time. I went at the request of Mr. Ryerson.

5th int. State where you were on the propeller during said conversation, and who was with you, if any one.

Answer. I was in the state-room; John Oliver was in the state-room with me.

6th int. State, as near as you can, the conversation you heard.

Answer. I heard conversation between three or four men; one was called Jim, another one called Mac., and Mr. Dexter and Mr. Rae; they were speaking of the Ottawa. Jim said he should be a bad witness for Mr. Ryerson; that it would be better for Mr. Ryerson to pay him to keep out of the way. Mr. Rae then asked him what he would take to leave; he said he would take three hundred dollars. Mr. Rae and Mr. Dexter thought that was too much; Jim thought it was not too much. He would have to keep out of the way for six months or a year; that he would want some clothes; that he would have to travel, and would probably have to go to Minnesota. In course of the conversation he was speaking about the lights on the
545 propeller being out; the next was about the price for his leaving. Mac said he thought two hundred and fifty dollars would be enough, and Jim finally consented to take that amount.

7th int. At the time he spoke of the lights being out, was the captain of the propeller present, and did he and Jim have some talk; and if so, what?

Answer. The captain was present. When Jim said the lights were out, the captain said it was a damn lie, and not a word of truth in it. Jim then said he could bring another man to swear to the same thing.

8th int. Did Rae and Dexter finally refuse to pay Jim any money; and if so what did Jim then say, if anything?

(Objected to by Proudfoot.)

Answer. They did refuse to pay him (Jim) anything. Jim then remarked that he would go off and see this other man.

Cross examination by Mr. Proudfoot.

1st x int. From the state-room in which you were concealed, could
546 you see the faces of the different parties engaged in this conversation?

Answer. I could not.

2d x int. How do you know then who was speaking at different times?

Answer. From the sound from the questions asked, and the answers.

3d x int. Could you hear distinctly every word that was said?

Answer. Yes.

4th x int. Have you related all that was said by all the parties concerned on that occasion?

Answer. Everything that was of any importance; there was more said perhaps than what I have stated.

5th x int. Do you know all the circumstances connected with this case; and if so, from whom have you derived your information?

Answer. I know nothing of the circumstances of the case, anything further than I heard there was a suit pending against the Ottawa for
547 running into a schooner or brig. I know nothing of the case.

6th x int. How then are you capable of judging of the importance of the hearing of what may have been said on this occasion?

Answer. I am not capable.

7th x int. Have you stated all that passed, that you considered of importance?

Answer. I have.

8th x int. State what you considered to be of importance, and which made an impression sufficient for you now to relate it.

Answer. Most what was said, beside what I have related, was in reference to Jim's going away either to Minnesota, St. Louis, and about his clothes. What was of importance, that Jim was trying to convey the idea to Mr. Ryerson that he would be a bad witness for him, and that it would be for Mr. Ryerson's advantage to have him, Jim, leave.

9th x int. When Mr. Ryerson requested you to be there, did he explain to you the object he had in view?

Answer. He did not.

548 10th x int. Did you go there entirely ignorant of the purpose for which you were to be shut up in a state-room, perhaps for an hour or more?

Answer. I did not. Mr. Ryerson's book-keeper gave me an idea of what they wanted. He said he wanted me to hear some conversation that was to take place on board of the Ottawa at such a time, at eleven o'clock.

11th x int. Please state all that the book-keeper told you in regard to this conversation.

Answer. That was all that was said. He wanted I should be there and hear some conversation that would take place on board of the Ottawa.

12th x int. Did he not state any of the circumstances as to whose conversation you were to listen to, and what would probably be the subject of the conversation?

Answer. He did not.

13th x int. And you had no further information than that which you have mentioned previous to going on board of the Ottawa. Is this so?

Answer. That is all.

549 14th x int. How long did this interview continue?

Answer. Not to exceed a half an hour, I should say.

15th x int. Was the conversation commenced by Jim; if not, by whom, and what was said?

Answer. I could not testify as to that. My impression is that Mr. Rae broached the subject first; I would not be positive on that point. I think Mr. Rae asked Jim what he knew about this Ottawa case; I think that is the way it commenced. Jim made the reply that he knew all about it, and that he would be a bad witness for Mr. Ryerson.

16th x int. Will you swear positively that the conversation was commenced in that way?

Answer. No, I would not; that is merely my impression.

17th x int. Then, the remarks made by Mr. Rae you did not consider of as much importance in the case as those made by Jim. Is this so?

Answer. I don't know that I had any impression in regard to that.

18th x int. Placed as you were in that state-room, and for the pur-
550 pose of overhearing a conversation, would not justice to all parties concerned require that you should weigh well everything that was said on both sides?

Answer. Yes.

19th x int. Why then have you forgotten portions of the conversation, or did you not at the time give it your undivided attention in order that you might fully understand all its bearings?

(Objected to by Mr. Dexter.)

Answer. I don't know that I have forgotten anything of any importance. I have related all that was of any importance, and could be of any importance, in any case.

20th x int. You say that the conversation lasted not to exceed a half an hour, was it sustained all this time by Jim, or were remarks from time to time made by Mr. Dexter, or Mr. Rae?

Answer. Sometimes by Jim, sometimes by Mac, sometimes by Mr. Dexter, and sometimes by Mr. Rae. I know they bantered quite a while about this three hundred dollars.

21st x int. State, if you know, for what purpose Mr. Oliver was concealed in the state-room with you.

551 Answer. I don't know. While I was at Mr. Ryerson's at the appointed time Mr. Oliver came there, and we went together on board of the propeller. I concluded he was going for the same purpose I went.

22d x int. Since the day on which this conversation occurred, have you had any conversations with any one connected with this matter on the part of Mr. Ryerson in relation to what occurred at that interview; if yea, state with whom, and what passed in relation thereto.

Answer. Mr. Dexter spoke to me Friday or Saturday, and wanted me to be at his office at two o'clock, and he would go with me to the commissioner's office to give my testimony in relation to what occurred on the Ottawa. He said he wanted me to think it over so as to be clear on all the points. That is all the conversation I have had in regard to it.

23d x int. Then what you have stated is solely from your own recollection of what occurred at the interview. Is that so?

Answer. Yes, sir.

URIAH H WHEELER.

552 And the said John B. Warner was, by me, on the third day of July, A. D. 1862, first duly cautioned, and sworn, to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid. I carefully examined the said John B. Warner, and he did thereupon depose and say as follows, to wit:

1st int. What is your name, age, occupation, and place of residence?

Answer. My name is John B. Warner; my age is forty; occupation, sailor; I live in Chicago.

(Mr. Proudfoot here enters a general objection to the testimony of Warner.)

2d int. You have been sworn in the district court in this case once before?

Answer. I have.

3d int. You were captain of the Ottawa at the time of the collision, were you?

Answer. Yes, sir.

4th int. How many men does the propeller Ottawa carry?

Answer. Sixteen.

5th int. How many men had she on the night of the collision?

Answer. Sixteen.

553 6th int. How many signal lights does she carry?

Answer. Three.

7th int. How many on the night of the collision did she carry?

Answer. Three.

8th int. What condition were they in on the night of the collision?

Answer. In good condition, burning bright.

9th int. Did you go forward, while on deck, before or after the collision, to trim light or lights; and if so, with whom did you go?

Answer. No, sir. I did not.

10th int. On the night of the collision, and at the time of the collision, what was the speed of the propeller?

Answer. She was running about seven miles an hour, as near as I can judge.

11th int. At the time of the collision how far was the propeller north of Thunder Bay light?

Answer. We were about eight miles north of Thunder Bay light and about three or four miles from the land

554 12th int. Who was on the look-out at the time of the collision?

Answer. I was.

13th int. How long had you been on the look-out?

Answer. From six o'clock up to the time of the collision; about an hour and a half.

14th int. Was your attention, as a look-out, during the whole of the time, or at any time whilst you were occupied as a look-out, called away from your duties as a look-out?

Answer. No, sir.

15th int. Had you anything on your mind other than to look out?

Answer. No, sir.

16th int. Had you, during that time, any other duty to perform but to look out and communicate with the man at the wheel?

Answer. No, sir.

17th int. What was you doing during the time you were stationed on the look-out?

Answer. I was looking out for vessels and lights.

555 18th int. What class was the propeller Ottawa at that time?

Answer. She was freight boat, freight propeller; the smallest propeller in the grain trade; her tonnage is three hundred and fifteen tons; she would carry one hundred and fifty thousand feet of lumber beside fuel.

19th int. Where were you stationed?

Answer. On deck, forward of the pilot-house.

20th int. Why were you stationed there?

Answer. I was stationed there as a look-out, because that is the best place for a look-out, according to my experience; I have been on board of her a long time.

21st int. Have you tried other places?

Answer. Yes, sir.

22d int. What is the best place?

Answer. That is the best place on that boat.

23d int. What are the advantages of the pilot-house as a look-out?

Answer. The pilot-house is a little higher than deck, and in changing position from the deck to the pilot-house we can see a little better,

556 and the whistle and bell-rope lead to, and the compass is in, the pilot-house.

24th int. You say the pilot-house is a little higher than the rest of the boat, is it not too high so as to be in danger of over looking small craft?

Answer. No, sir.

25th int. When you altered the course of the propeller to north where did you go?

Answer. I went out of the pilot-house, on deck, forward of the pilot-house.

26th int. What did you go forward for?

Answer. To look out.

27th int. How long was this before the collision took place?

Answer. About ten minutes, as near as I can recollect; might have been a little more.

28th int. During that ten minutes where did you stand and what were you doing?

Answer. I stood on deck forward of the pilot-house most of the time; I was looking out for lights and vessels, and I have no recollection of going away from there.

557 29th int. What do you mean by most of the time?

Answer. I mean I did not go into the pilot-house until I run in to blow the whistle; this was a part of the ten minutes.

30th int. Where were you standing when you first saw the schooner Caledonia?

Answer. On deck, forward of the pilot-house.

31st int. What were you doing?

Answer. Looking out for vessels and lights.

32d int. What did you first see of her?

Answer. The sails.

33d int. Did you do anything, and if so, what did you do?

Answer. As soon as I saw her sails I went into the pilot-house immediately, and blew the whistle.

34th int. Why did you blow the whistle?

Answer. She was coming right into us, and was fifteen or twenty rods off; she was going very fast. I blew the whistle to notify her.

35th int. Did you do anything else?

Answer. No, sir.

558 36th int. Have you answered all?

Answer. I could not do more. The vessel was coming right into us, and if I had stopped, or backed, we would have both sunk; and our chances for getting clear of her was to keep going ahead, at the rate we were going and the vessel, we stood a chance to get clear of the vessel.

37th int. Did you nearly get clear of her?

Answer. She struck us on the quarter. Yes, sir.

38th int. When you saw the schooner bearing down on you, did you see any light on board of her?

Answer. No, sir.

39th int. If she had a light on the pall-bit, and it was burning, why did you not see it?

Answer. The vessel was heading right for the propeller, and had the wind on, her head sails were becalmed, and the head of the bowsprit was right in the line with the light, was the reason why I thought I could not see her light if she had any. It is impossible to see a light in that position.

559 40th int. Who was at the pilot-house beside yourself?

Answer. Richard Brusseau.

41st int. Any one else?

Answer. No, sir.

42d int. How long had you been at the pilot-house before the collision occurred?

Answer. About an hour and a half.

43d int. What do you mean by at the pilot-house?

Answer. I mean in the pilot-house and on deck forward of the pilot-house.

44th int. Who was at or near the pilot-house during that time except Brusseau and yourself? (Withdrawn.)

44th int. How did the propeller steer up to the time of the collision?

Answer. She steered well.

45th int. Did Brusseau require any help?

Answer. No, sir.

46th int. Did you hear any one on board of the propeller call for any one to assist at the wheel; if yea, who called, and for whom did they call?

560 Answer. I did not.

47th int. When you run to the pilot-house to blow the whistle, who was in the pilot-house?

Answer. Richard Brusseau.

48th int. Any one else?

Answer. No, sir.

49th int Did you run to blow the whistle more than once, and where was it that you run to blow the whistle?

Answer. I only run once to blow the whistle, that was when I saw the vessel's sails, a few seconds before the collision.

50th int. How long did you blow the whistle?

Answer. I blew until she struck, it must have been a few seconds, five or six seconds.

51st int. Where was the bright light, when you run to the pilot-house to blow the whistle?

Answer. It was on the top of the pilot-house, in its place.

561 52d int. Was there any other light burning or out, besides the binnacle light in the pilot-house, when you went there to blow the whistle?

Answer. No, sir.

Cross-examination by Mr. Proudfoot.

1st x int. How long had you been in command of the Ottawa on the night of the collision?

Answer. Since in July, 1859.

2d x int. Will you swear that, from six o'clock up to the moment of the collision, you were on the look-out, and during that time you did not leave the post of look-out for one moment, or for any purpose whatever; but remained in, or immediately about, the pilot-house during the whole of that time engaged in the duty of look-out?

Answer. Yes, sir.

3d x int. What are the usual duties of the captain of the watch?

Answer. To look out for lights and vessels, and attend to the courses

562 of the vessel.

4th x int. Is that all?

Answer. To manage the boat, if necessary—to ring the bells and blow the whistle. It is sometimes necessary to call a man forward, by giving the whistle a small toot. If I want the mate I do this, and if he wants he does the same.

5th x int. In case of any accident or disarrangement of any kind occurring during the night, it is not a part of the duty of the captain of the watch to look after it?

Answer. Not unless he leaves a man in his place on look-out. The captain of the watch never leaves his place without calling a man.

6th x int. This collision occurred on a return voyage from Buffalo, did it not?

Answer. Yes, sir.

7th x int. Are you in the habit of navigating the lakes to Buffalo? If so, state how often you have been there since July, 1859.

Answer. Since 1859. I was down in 1860 once, and in 1861 I was down three times. I have been in the habit of going down there, and am familiar with the rout. I have traded between Buffalo and Grand Harven six
563 years in succession on the propeller Pray, as captain.

8th x int. Give the date of the last time you were down there before the trip upon which the collision occurred.

Answer. It was in the fall of 1858, in the latter part of November, between the fifteenth and twentieth.

9th x int. During the trip upon which the collision occurred, were you not obliged to consult your chart, in order to post yourself in regard to courses, &c.?

Answer. No, sir.

10th x int. You say, in answer to the 28th direct, that you stood forward of the pilot-house for ten minutes, or most of that time, before the collision occurred, looking out for lights, &c., and that you have no recollection of going away from there; will you swear positively that you did not leave that position during that time?

Answer. Yes, sir.

11th x int. Which way was the wind on that night?

Answer. About west-northwest.

564 12th x int. Before the collision occurred, did you see no lights on your larboard bow.

Answer. Not a few minutes before the collision.

13th x int. How long before the collision occurred did you see any lights on your larboard bow?

Answer. About ten minutes, I should think, as near as I can recollect. It might have been a little more.

14th x int. Why did you not see any immediately before the collision?

Answer. I don't know as I can tell, except for the reason given in my direct examination, if there was any light there.

15th x int. Did you see more than one light, four, five or six minutes before the collision on the larboard bow?

Answer. I only saw one.

16th x int. How long before the collision did you lose sight of it?

Answer. About ten minutes, I should think, as near as I can recollect.

17th x int. You say, in answer to direct 34, that the Caledonia was going very fast. How do you know at what rate of speed she was going?

565 Answer. Well, I saw her canvas. I judged she had a very heav press of canvas. The wind was blowing very stiff on her quarter. I saw her sails; she had all her canvas on her. If she had been reefed down she would not have presented so large a body of canvas.

18th x int. Are these your reasons for saying she was going very fast?

Answer. Yes, sir.

19th x int. In answer to direct 36th, you say if you had stopped or backed, you would have both have sunk, and that your chances for getting clear was to keep going ahead; did these reflections occur to you at the moment of the collision, or upon reflection since the collision? Have you made up your mind that such was the condition of affairs at that time?

Answer. They occurred to me at the moment of the collision.

20th x int. In answer to the 39th direct, you state why, if there was a light on the colliding vessel, you did not see it; do you give these
566 reasons as actual facts, or as upon reflection, you have made up your mind must have been the state of the case?

Answer. I give it as actual facts.

21st x int. Then you swear that if there was a light on the colliding vessel the head sails and bowsprit prevented your seeing it, do you?

Answer. Yes, sir.

22d x int. How do you know this?

Answer. Because I very often met vessels whose light I would lose in the same position.

23d x int. How were you heading at the time of the collision?

Answer. North.

24 x int. You say the propeller steered well, up to the time of the collision; how do you know?

Answer. I can tell by looking at the bow of the boat, and by looking at the jack-staff, and when she does not steer well the wheel chain makes a good deal of noise, shifting the wheel.

567 (The proctor for the respondent here admits that the propeller Ottawa has been engaged in the lumber trade since July, 1859, between Muskegon and Chicago, except the trips above mentioned to Buffalo and one to Toledo.)

Direct resumed by Mr. Dexter, July 10th, '62.

1st redirect int. Is the picture, marked "Exhibit A," and now shown to you, a correct picture of the propeller Ottawa? and state if you were aboard when it was taken; and if yea, where you stood, and also point out the place about where you stood on the evening of the collision, from the time the Ottawa's course was changed to north to the time of the collision.

Answer. The picture marked "Exhibit A" is a correct picture of the propeller Ottawa. I was on board of her when it was taken. I stood right forward of the pilot-house, on deck, where I generally stand when I am on watch. On the evening of the collision, from the time the Ottawa's course was changed to north, and up to the time of the collision, I stood

568 about where I stand in the picture, between the captain and the pilot-house. The distance between the pilot-house and the stern on the Ottawa is eighteen feet and a half.

2d redirect int. State whether, after the propeller's course was changed to north, and up to the collision, you saw any light.

Answer. No, sir.

JNO. B. WARREN.

And the said Peter Flood was by me, on the twentieth day of September, A. D. 1862, first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid; I carefully examined the said Peter Flood, and he did thereupon depose and say as follows, to wit:

1st int. What is your name, age, occupation, and place of residence?

Answer. My name is Peter Flood; am about fifty-five years old; I

569 am a seaman; I live in Chicago.

2d int. How long have you sailed out of Chicago?

Answer. I came here in 1836, and have sailed out of Chicago ever since.

3d int. How long, if any time, on your own vessels?

(Objected to by Mr. Proudfoot.)

Answer. Between thirteen and fourteen years on my own vessels.

4th int. Are you a man of family; do you own the house and lot where you live; and are you pretty well acquainted in Chicago?

Answer. I am a man of family; I do own the house and lot where I live; I am pretty well acquainted in Chicago.

5th int. Do you know Walter Ellis; and if so, what is your acquaintance with him?

Answer. I know Walter Ellis; I shipped him last year, one passage from Chicago to Muskegon and back; that is all the acquaintance I have with him. This was about the seventh of November, Saturday; he was shipped as seaman, and I was captain.

570 6th int. What conversation, if any, did you have with him on that trip about the loss of the Caledonia?

Answer. It was Saturday afternoon, between three and four o'clock; it was blowing from the southward and westward, and was snowing very thick; I said to Walter, I am going below to get a cup of coffee; he was at the wheel. I told him to keep a good look-out, that I did not want any Caledonia affair; and then he said they would like to have got a hold of me very well last fall. I asked him if he was on board of her; he said, yes, that he was at the wheel. I then asked him how it happened that they got foul of the steamer; the captain asked him if he saw a light, and he said he did not; and then the captain told him to keep her off till he did see the light. He kept off till he did see the light, and then the captain told him to steady her for the light; that it was Thunder Bay Island light. A moment before
571 they collided the mate jumped on deck, and told him to shove his helm down. He then said if the mate had had charge of the ship he did not think the accident would have occurred.

(Mr. Proudfoot here objects to the whole of the last answer, because it is hearsay, and the testimony of Walter Ellis himself has been taken in the case.)

7th int. State if both the propeller Ottawa and the Caledonia had been at different times in the Muskegon and Chicago trade?

Answer. Yes; I have known them to trade there occasionally.

Cross-examination by Mr. Proudfoot.

1st x int. What vessel do you command, and how long have you commanded her?

Answer. I command the schooner Lizzie Throop; have had her five years.

2d x int. Do you know Martin Ryerson and Captain Warren; if so, how long have you known them, and what relations exist between you?

Answer. I know them both. I have known Captain Warren some sixteen or seventeen years. I have only been acquainted with Mr. Ryerson
573 three years. My family and Captain Warren's family associate together. I have never done any business with Mr. Ryerson; my relations are friendly.

3d x int. Have you ever had any conversations with Captain Warren or Mr. Ryerson in regard to the collision between the Ottawa and the Caledonia? If so, state when and where such conversations occurred, and state fully all that occurred at such conversation.

Answer. I can't state where I first had conversation with Captain Warren. I don't think I had a conversation with him till last fall. I think it was some time in December; they were repairing the Ottawa as I was coming along the dock. I came down to the propeller, and saw Captain Warren, and told him I had seen that man, or knew where he was—the man that was at the wheel on the Caledonia. I told him the man was in Chicago. I showed him where this man boarded, and Captain Warren went and saw him. He said he wanted to see that man; he was the man he wanted.
574 I had no conversation with Mr. Ryerson, except I called at his office, and he wanted me to call and see Mr. Dexter. I stopped in at Ryerson's office occasionally.

4th x int Will you swear that the conversation mentioned in your last answer was the first and only conversation that you have had with Captain Warren in regard to the collision between the Ottawa and the Caledonia?

Answer. I don't think I could, sir. We may have spoken of it at different times; we may have spoken of it at my house, and on the dock.

5th x int. Before the conversation, mentioned in your answer to the third cross-int., had the name of Walter Ellis been mentioned or spoken of by Captain Warren to you? If so, state what was said in regard to him

Answer. I think not, sir. Captain Warren did not know the man's name. I gave him his (the man's) name myself.

6th x int. Had Captain Warren told you that he wanted to find
575 the man that was at the wheel of the Caledonia, the night of the collision?

Answer. Not to my knowledge; I have no recollection of his doing it.

7th x int State the circumstances under which Ellis was employed on your vessel, and give the day of the month and week that you employed him.

Answer. I think it was Saturday, the seventeenth of November, 1861. On that morning my mate, we called him "Yankee," he was stranger to me, told me he could get three other men, and he went and brought Ellis and two other men; they were to have fourteen shillings a day, as they should decide, or fourteen dollars for the trip. Ellis was a perfect stranger to me when he came on board. I don't know where the mate got them.

8th x int. You say in answer to the sixth direct interrogatory, that on Saturday afternoon you told Walter, who was at the wheel, that you did not want any Caledonia affairs, &c., state what day of the month this conversation occurred, and where was the vessel at the time.

576 Answer. It was on the twenty-third day of November, I think; the vessel was on Lake Michigan, lying off between Chicago and Milwaukee; I should judge about twenty-five or thirty miles from the west shore. This was on our passage from Muskegon house.

9th x int. Had you, previous to making this remark, any knowledge of Ellis having been on board of the Caledonia the night of the collision?

Answer. I had not, sir, the slightest knowledge.

10th x int. Why then did you make this particular reference to the Caledonia collision?

Answer. It would be more natural for me to think of those things in that kind of weather; I knew she had been lost a short time previous. It was in our line of business to remember these things.

11th x int. How long did Ellis remain on board of the Lizzie Throop?

Answer. He was seven days under wages. He was on board of her one or two days longer here in Chicago before she started.

577 12th x int. Will you state about the date of the month when you informed Warren that Ellis was in Chicago?

Answer. I could not do that. I think it was somewhere about the middle of the month of December.

13th x int. Whom did you understand Ellis to mean when he said "they" would have liked to got hold of me last fall, and have you stated the whole or the material part of the conversation with Ellis?

Answer. I never learned from him, he never told me, and I did not ask him, whom he meant by "they." I have stated the material part of the conversation I had with Ellis on board of the vessel.

14th x int. Have you met Ellis since he was employed on your vessel; if so, state where, how often, in whose presence, and what occurred at such meetings.

Answer. I have met him at different times since; but not to have any conversation with him. I met him once near the post office and once on Lake street bridge.

578 15th x int. Have you never met Ellis at the office of Messrs. Walker, Van Arman and Dexter, or anywhere in the presence of any of the members of that firm?

Answer. I have not, sir.

16th x int. Have you never met Ellis in the presence of Captain Warren, Mr. Ryerson, or Robert Rae?

Answer. I have not, sir.

17th x int. Do you know where Walter Ellis now is, and how he has been employed since he left your employ?

Answer. I do not, sir.

18th x int. When did you last see him, and where?

Answer. It was some time in the spring, I think, on Lake street bridge.

P. FLOOD.

579 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Azariah P. Galt, a notary public duly commissioned and qualified for the city of Chicago, in the county of Cook and State of Illinois, acting under and by virtue of the act of Congress entitled an act supplementary to an act to authorize notaries public to take and certify oaths, affirmations, and acknowledgments in certain cases, do hereby certify that the above and foregoing depositions were taken before me by consent of parties and their respective proctors.

I further certify that on the days above mentioned I was attended by the proctors for the respective parties to said suit, and by the said witnesses, who were of sound mind and lawful age; and the said witnesses were by me first carefully examined, and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid; and the depositions were by me reduced to writing, in the presence of the said
580 witnesses, and from their statements and after carefully reading the several depositions to the several witnesses, they subscribed the same in my presence. I have retained the said depositions in my presence for the purpose of delivering the same with my own hand open into the court, for which the same was taken.

And I do further certify that I am not of counsel nor proctor for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this
[SEAL.] sixteenth day of June, A. D. 1863.

AZARIAH P. GALT, *Notary Public.*

{ Int. rev. 10 cents, cancelled. }

Endorsed: Filed June 17th, 1863.

WM. H. BRADLEY, *Clk.*

581 (Here follows picture, "Exhibit A," page 581.)

582 And afterwards, to wit, on the 9th day of July, A. D. 1863, in the record of the proceedings of said court in said cause is the following entry, to wit:

ROBERT STEWART *et al.* }
v. } Appeal.
PROPELLER OTTAWA. }

Now come the parties by their proctors, and thereupon this cause coming on to be heard, and after progressing in the trial of the same until the hour of adjournment having arrived, the further hearing is postponed until to-morrow.

And afterwards, to wit, on the 10th day of July, A. D. 1863, in the record of the proceedings of said court in said cause is the following entry, to wit:

ROBERT STEWART *et al.*
v.
PROPELLER OTTAWA. } Appeal.

Now come again the parties by their proctors, and after hearing the arguments of the advocates, the court takes said cause under advisement.

583 And afterwards, to wit, on the 26th day of October, A. D. 1863, in the record of the proceedings of said court in said cause is the following entry, to wit:

ROBERT STEWART, THE PACIFIC MUTUAL INSURANCE COMPANY OF NEW YORK, AND THE ARCTIC INSURANCE COMPANY OF NEW YORK,
v.
THE PROPELLER OTTAWA. } Appeal.

Now come the parties by their proctors, and the court having fully considered and being now fully advised of the matters herein submitted, affirms the decree of the district court. And it appearing from the record that a decree was rendered in the district court, on the twenty-seventh day of February, A. D. one thousand eight hundred and sixty-two, in favor of the libellants, for the sum of ten thousand one hundred and forty-six dollars and eight cents damages, together with costs.

It is thereupon ordered, adjudged, and decreed by the court, that the respondents pay to the libellants the said sum of ten thousand one

584 hundred and forty-six dollars and eight cents, the amount of the decree aforesaid, together with ten hundred and twelve dollars and ninety-one cents, being the interest on said decree, from the said twenty-seventh day of February, A. D. one thousand eight hundred and sixty-two, amounting in all to the sum of eleven thousand one hundred and fifty-eight dollars and ninety-nine cents, together with the costs herein to be taxed, and also the costs decreed in the district court; and it is further ordered that summary judgment be, and the same is hereby accordingly entered against Martin Ryerson, as principal, T. Newell, T. M. Avery, and Robert H. Foss, as stipulators, in the sum of twenty thousand two hundred and ninety-two dollars and sixteen cents, being the amount of the stipulation given on the appeal from the decree of the district court. And it is further ordered that unless said decree for damages and costs shall be paid within ten days execution to issue against the respondent and his stipulators therefor to the marshal of said district, for the sum of twenty thousand two hundred and ninety-two dollars and sixteen cents, the amount of the penalty in the stipulation

585 entered into, to be discharged and satisfied upon the marshal making thereon the decree for damages, interest and costs, and thereupon the respondent prays an appeal to the Supreme Court.

And afterwards, to wit, on the 4th day of November, A. D. 1863, the said respondent and appellant filed his appeal in the words and figures following, to wit:

THE PROPELLER OTTAWA, her tackle, apparel, &c.,
MARTIN RYERSON, claimant and appellant,
vs.
ROBERT STEWART *et al.*, respondents.

To the honorable the Supreme Court of the United States:

The appeal of Martin Ryerson, the above-named claimant and appellant, respectfully showeth that on the second day of October, eighteen hundred

and sixty, the above-named Robert Stewart filed his libel in the dis-
586 trict court of the United States for the northern district of Illinois against the propeller Ottawa, her tackle, apparel, &c., in a cause civil and maritime, for the recovery of damages alleged to have been sustained by him to the schooner Caledonia and her cargo by collision with the said propeller Ottawa, on Lake Huron, in the State of Michigan, and that the said propeller Ottawa was arrested upon process issued upon said libel, and was discharged on your petitioner's filing his claim and entering into stipulations. And your petitioner thereupon filed his answer to said libel, and the said libellant replied thereto, and such proceedings were had in said cause that on the twenty-seventh day of February, 1862, a final decree was made and pronounced therein by the said district court, wherein it was in substance adjudged that the said libellant, together with the Pacific Mutual Insurance Company, of New York, and the Arctic Insurance Company, of New York, (which said insurance companies, by said decree, were to a certain extent subrogated to the rights of said Stewart and made co-libellants in said cause,) recover against the propeller Ottawa, her tackle, &c.,
587 the sum of ten thousand one hundred and forty-six dollars and eight cents, together with costs.

And that after such final decree your petitioner duly appealed therefrom to the circuit court of the United States for the northern district of Illinois, and the said cause was removed thereby into the said circuit court and there tried anew, and such proceedings were had in the said circuit court that afterwards, on the twenty-sixth day of October, 1863, the said circuit court made a final decree in said cause, whereby it was decreed that the said decree of the district court be in all things affirmed with costs, and that the said appellees have execution, and that the stipulators cause their stipulations to be fulfilled, which said decree of the said circuit court is, as this appellant is advised, erroneous and ought to be reversed; wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectively prays that the said decree of the
588 said circuit court and the libel, answers, pleadings, depositions, evidence, and proceedings in the said cause, may be sent to the Supreme Court of the United States without delay; and that this appeal may operate as a stay of proceedings on said decree of the circuit court, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed, and a decree made dismissing said libel with costs or such other decree as to the said Supreme Court shall seem just.

MARTIN RYERSON.

WALKER & DEXTER, *Proctors for Appellant.*

I hereby acknowledge full and legal service of a copy of the within appeal, this 4th day of November, A. D. 1863.

L. PROUDFOOT,
Proctor for Libellant.

Endorsed: Filed Nov. 4, 1863.

WM. H. BRADLEY, *Cl'k.*

589 And afterwards, on said 4th day of November, A. D. 1863, said respondent and appellant filed his appeal bond in the words and figures following, to wit:

Circuit court of the United States of America, northern district of Illinois.

THE PROPELLER OTTAWA, her tackle, &c., MARTIN RYERSON, claimant and appellant,
v.
ROBERT STEWART *et al.*, libellants and appellees.

Know all men by these presents that we, Martin Ryerson, Eli Bates, Nathan Mears, and J. M. Walker, of the city of Chicago, county of Cook, and State of Illinois, are held and firmly bound unto Robert Stewart, and the Pacific Mutual Insurance Company, of New York, and the Arctic Insurance Company, of New York, in the sum of twenty-four thousand dollars, for the payment of which well and truly to be made we bind ourselves and each
590 of us, our and each of our heirs, executors, and administrators jointly and severally, firmly by these presents, sealed with our seals, and dated the first day of November, in the year of our Lord one thousand eight hundred and sixty-three; whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit, by the circuit court for the northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

MARTIN RYERSON. [SEAL.]
ELI BATES. [SEAL.]
NATHAN MEARS. [SEAL.]
J. M. WALKER. [SEAL.]

The word "dollars" interlined in the 8th line from the bottom of the first page, done before execution.

591 UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

Eli Bates, Nathan Mears, and James M. Walker, being duly sworn depose and say, and each for himself saith, that he is worth the sum of twenty-four thousand dollars over and above all just debts and liabilities.

ELI BATES.
NATHAN MEARS.
J. M. WALKER.

Sworn to and subscribed before me this 2d day of November, A. D. 1863.
WM. H. BRADLEY, *Clk.*

Endorsed: Approved.

THOMAS DRUMMOND.

Endorsed: Filed Nov. 4, 1863.

WM. H. BRADLEY, *Clk.*

592 And afterwards, to wit, on said 4th day of November, A. D. 1863, the following citation was filed in said cause, to wit:

By the honorable Thomas Drummond, one of the judges of the circuit court of the United States for the northern district of Illinois, to Robert Stewart, the Pacific Mutual Insurance Company, and the Arctic Insurance Company, both of the State of New York; whereas Martin Ryerson, claimant of the

propeller Ottawa, her tackle, &c., has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the northern district of Illinois, made in favor of you, the said Robert Stewart, and the Pacific Mutual Insurance Company, of New York, and the Arctic Insurance Company, of New York, against the said propeller Ottawa, her tackle, &c., and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do
593 and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Chicago, in the northern district of Illinois, the third day of November, in the year of our Lord, 1863, and of the independence of the United States the eighty-eighth.

THOMAS DRUMMOND.

I hereby acknowledge full and legal service of a copy of the within citation this 4th day of November, 1863.

L. PROUDFOOT, *Proctor for Appellees.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

William F. Whitehouse, of the city of Chicago, being duly sworn, says that on the third day of November, 1863, he served a copy of the foregoing citation on Robert Stewart, by leaving the same in his office, with the person in charge thereof.

WILLIAM F. WHITEHOUSE.

Sworn Nov. 4th, 1863, before me,

ROB'T RAE, *U. S. Commissioner.*

Endorsed: Filed Nov. 4th, 1863.

WM. H. BRADLEY, *Clk.*

594 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a full, true, and complete transcript of the record and all the proceedings had in the cause wherein Robert Stewart and others were libellants, and the propeller Ottawa, respondent, as the same appears of record in said court, and now remaining in my custody.

In testimony whereof, I have hereunto set my hand and affix the seal of
[SEAL.] said court at office, in Chicago, in said district, this 28th day of November, A. D. 1863, and of our independence the 88th year.

WILLIAM H. BRADLEY, *Clerk.*

Filed December 11, 1863.

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United States Supreme Court,

DECEMBER TERM, A. D. 1864.

The Propeller Ottawa, her Tackle, &c., Martin Ryerson, Claimant and Appellant,

vs.

Robert Stewart, The Pacific Mutual Insurance Company, and The Arctic Insurance Company, of New York.

BRIEF FOR APPELLANT,

BY

WALKER & DEXTER.

CHICAGO:
JAMESON & MORSE, BOOK AND JOB PRINTERS.
1865.

Supreme Court United States,

DECEMBER TERM, 1864.

THE PROPELLER OTTAWA, Her Tackle, &c., MARTIN RYERSON, Claimant and Appellant,
vs.
ROBERT STEWART, THE PACIFIC MUTUAL INSURANCE CO., AND THE ARCTIC INS. CO., OF NEW YORK.
No. 183.

Appeal from the Circuit Court of the United States, for the Northern District of Illinois.

This cause is one of collision that occurred on Lake Huron, on Sunday night, Sept. 16th, 1860, about eight miles north of Thunder Bay Island light, between the propellor Ottawa, and the schooner Caledonia. The schooner had a free wind and was bound down the lake for Buffalo; the propeller was bound up for Chicago.

These facts present an ordinary case of a sailing vessel, with a fair wind, approaching a steamer.

It is admitted to be the law of this case, that the schooner should keep her course, and that the steamer should determine upon a change of course, which would avoid the schooner, provided the schooner did keep her course. It is also claimed, as well settled law in this court, that it is equally binding on the schooner to keep her course, as on the steamer to change, and by this we understand that she shall keep it with seamanlike steadiness.

It is laid down in the *New York and Liverpool Steamship Co. vs. Rumball*, 21 *How.* 384: "Sailing vessels approaching a steamer are required to keep their course, on account of the correlative duty which is devolved upon the steamer to keep out of the way, in order that the steamer may know the position of the object to be avoided, and may not be led into error in her endeavor to comply with the requirement."

The same rule is set forth in the *Osprey*, *Sprague's Decisions*, 256. And also in *St. John vs. Paine*, 10 *How.* 584, where it is said; "By an adherence to this rule, on the part of the sailing vessel, the steamer, with a proper look-out, will be enabled, when approaching in an opposite direction, to adopt the necessary measures to avoid the danger, as she will have the right to assume that the sailing vessel will keep her course."

See also *Peck et al. vs. Sanderson*, 17 *How.* 182.

It is very plain that, by "keeping her course," it is not meant that the sailing vessel shall sail in the general direction she is pursuing, but shall with all reasonable and seamanlike skill hold steadily to her course; otherwise the rule amounts to nothing, as the approaching steamer could not calculate upon her movements. The rule is, not that the steamer shall watch the movements of the sail vessel, and change her course according to circumstances, but that it shall be done in sufficient time to avoid the line of approach held by the sail vessel, at the moment of discovery, the steamer concluding, as she has a right to do, that with all possible accuracy the sail vessel will maintain her course. If the steamer does this, she does her whole duty.

In this case, the sail vessel and steamer met in the middle of Lake Huron, in a locality where all vessels are going either up or down, and the courses they pursue are well settled and always the same. Hence, the circumstances of this case present no obstacle in the application of the well settled rule; on the contrary, invite it and furnish an admirable opportunity for its illustration.

We now affirm the proposition of fact by which we expect to stand or fall, to wit: That the steamer did change her course sufficiently, and in time, to avoid the schooner, had the schooner adhered to her course, that is, the course she was sailing, when the steamer made her light and changed, and which was her general course, and the one usually, if not always, pursued by vessels bound to her destination.

Captain Warren, of the steamer, (*Marginal page* 168, *Int.* 3, 4 *and* 5,) says the collision occurred about 7 or half-past, that his watch began at six and lasted until eight, that he was heading northwest, and made a bright light a little on the port bow, at the same time made a bright light on the starboard bow, that after he had passed the light on the starboard bow, he then put his wheel a-port and headed north. (*Cross Int.* 7, *Mar. p.* 171). He says, "that he was in the wheel-house when the course was changed. That when he altered the course of the propeller to north, he went out of the pilot-house forward on deck, and this was about ten minutes before the collision (25, 26 *and* 27 *Int. Mar. p.* 556)." By this statement of Captain Warren's it appears that, about ten minutes before the collision, he changed the course of the propeller from northwest to north, four points, in order to avoid the schooner, and that he went into the pilot-house to see that the change was actually made.

Richard Brosau says, (*Int.* 2, 3, 5 *and* 8, *Mar. p.* 160). "At the time of the collision I was at the wheel. My watch was from four to eight. We were steering northwest, and we saw a light ahead a little on our larboard bow. We also saw a light on the starboard bow, and when we had cleared the light on our starboard bow, we put our helm to port, and she headed about north. We put our wheel to port eight or nine minutes before the vessel struck us. (*Cross Int.* 10.) We headed north up to the time of the collision. (*Cross Int.* 8, *Mar. p.* 163.) We were heading northwest, as we passed the light on the starboard, and I put my wheel aport so that she headed north."

This is the statement of the man at the wheel, and it exactly confirms that made by the Captain, to the effect: "That eight or ten minutes before the collision, in order to avoid the schooner, the steamer's course was changed from northwest to north, four points," It is the united statement of all who were on deck at the time, is unimpeached, and even uncontradicted, except by one Williams, whose evidence we shall consider hereafter.

These statements are powerfully supported by the position of the colliding vessels, and physical facts of the case. As before remarked, both vessels were in an usual and well known path. The course steered by all vessels situated and bound as the schooner was, has always been, and always will be, southeast by south. It is equally true, that the only course for the propeller was northwest. These were chart courses, never deviated from, unless from some cause unexpectedly arising. This fact, the court will suppose, was well known and acted upon by both vessels. Now, it is the united testimony of all witnessess on both vessels, that the schooner approached the propeller at right angles, indeed she struck almost at right angles, but it is claimed that she answered somewhat to her wheel, immediately preceding the collision, which would account for her not striking on the same line she had been approaching.

In regard to the angle of approach, Captain Warren of the steamer says: (*Int.* 39, *Mar. p.* 558.) "The vessel was heading right for the propeller."

Captain Bangs, of the schooner, says: (*Int.* 55, *Mar. p.* 65.) "She" (the propeller) "must have headed very near at right angles, when I was on my course."

McSherry, the look-out on the schooner, says: (*Cross Int.* 7 *and* 8, *Mar. p.* 104.) "At the time of the collision the propeller was crossing our bows. She was coming right down on us."

Anderson, mate of the schooner, says: (*Int.* 19, *Mar. p.* 114). "When I first saw the propeller, she was heading right across our course."

Here is the evidence of all the witnesses who speak on this subject, including all on the schooner, and all but the wheelsman on the propeller, and which places the schooner's angle of approach beyond question, as being very near, if not exactly, a right angle. Now, if the propeller did not change her course from north to northwest, as appellants claim, then she was steering northwest at the time of the collision, the usual course for vessels bound up.

If heading northwest, and the schooner was approaching at right angles, the schooner was heading northeast, which was not towards Buffalo, her destination, but towards Canada, and the northern end of Lake Huron. Hence, by the improbability of this supposition, does it become probable that the propeller, at the time of the collision, was heading north instead of northwest, and if so, Warren and Brusau tell the truth, and her course had been changed to avoid the schooner, as they state. Besides, the schooner could not have been steering northeast, with the wind as it was, about west, without gybing her sails, which those on board the schooner swear they did not do, but that her sails continued on the larboard side of the schooner.

See Anderson's testimony, (*Int.* 33 *and* 34, *Mar.* 130,) who says: "At the time of the collision I saw the propeller's bow under the three booms under our *lee-bow*."

Walter Ellis, the wheelsman of the schooner, says: (*Cross Int* 15, *Mar.* 454.) "At the time of the collision the main boom was on the larboard quarter. Its position had not been changed from the time I took the wheel."

Again: We have the admission of Captain Bangs, of the schooner, that about half an hour before the collision, he saw a propeller's red and white light on his port bow. It is evident that these were the Ottawa's lights.

Captain Jones, of the Iowa, gives the following statement of his conversation with Captain Bangs: (*Mar.* 220.) "He said he saw the propeller's bright light and red light about two points on the port bow, about half an hour before the collision. He said he

did not think there was any danger, any trouble about a collision at all. I asked him how he could run into a propeller when he saw nothing but a bright light and a red light. I also asked him if he saw her green light, and he said not. I also asked him if he altered his course: he said he did not give any orders to alter her course, that his vessel steered wild, and she might have yawed off with him."

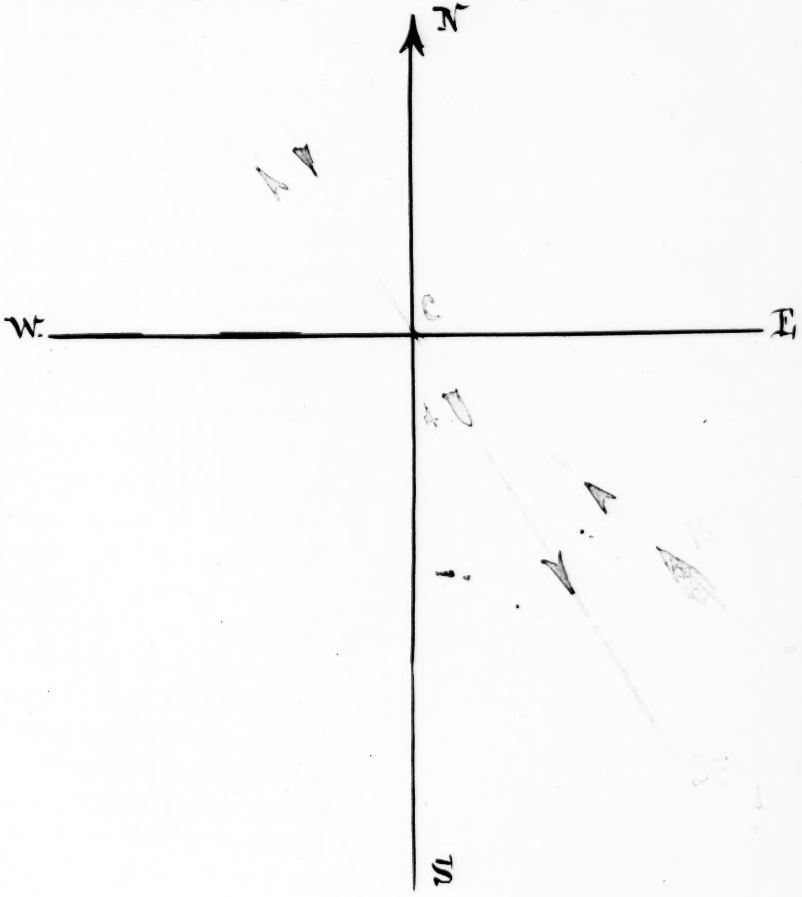
The foregoing is the first conversation held by Bangs about the collision, and was had within a day or two thereafter, when the facts were fresh in his mind, and when no motive can be supposed, inducing him to make a false relation. From this conversation it is very evident, he thought that the propeller he collided with was the one whose red and white light he saw previous to the collision. Neither he nor any other witness makes mention of seeing any other steamer that night.

W. H. Arthur, mate of the Iowa, gives the following account of a conversation with Bangs, had on the same day: "I asked the captain of the schooner" (meaning the Caledonia,) "how he came to get lost, and he said he collided with a large propeller about the size of the Iowa. I asked him if the propeller showed any lights, and he said that he saw lights about half an hour before he collided. I asked him what lights he saw, and he replied a red and white light."

Hereafter

Under the authority ~~already~~ cited, we are at liberty to treat these admissions as evidence in the case; they are fortified by the statement of Captain Warren, of the propeller, who says that previous to the collision he saw a sail vessel's light on his port bow, which corresponds with the locality of the schooner when she discovered the steamer's lights, and shows that they saw each other's lights about the same time. Place two vessels thus approaching each other four miles apart, or three, or two, the schooner making the steamer's lights over her port bow, and admit that the steamer at that time was not heading north but northwest, (and she was certainly heading in a northerly direction, as the schooner saw only her

red and white, or larboard and head lights,) and we affirm, that if the schooner was steering southeast by south-half-south, no collision could by *possibility* have occurred, as the line of approach was a constantly diverging one; the schooner's course, southeast by south-half-south, being to the southward and westward of the steamer's, even if northwest; *a fortiori*, if the steamer's course was north, as will be seen by an inspection of the following diagram:



Let "A" be the schooner sailing on a course southeast by south-half-south, and "B" the steamer sailing northwest, whose red and white lights the schooner makes on her port bow. It is an axiom, that if the two vessels hold their respective courses, they could never collide, for extending the lines of approach, they ever diverge, as the schooner could not make the steamer's light on her port bow until the point of intersection at "C" had been passed, and from that time on, their respective courses widen the distance between them. Nor is it easy to see how, after making the steamer's light on her port bow, the schooner keeping her course, she could ever strike the steamer at right angles, making only her red and white lights, unless, indeed, it be supposed that the steamer turned and ran nearly due south, and then changed again and was running in a northerly direction before the schooner reached her, which is absurd.

We submit that the conclusion is perfectly inevitable, that at the time of the collision the propeller could not have been heading northwest; and by its strength and force is the statement of Capt. Warren and Brusau confirmed, that just before the collision her course was changed from northwest to north.

Let us next inquire what evidence there is in the case to show that the schooner kept on her course, as it was her duty to do, and which she gives as southeast by south-half-south, and which we admit is very near the usual and proper course for a vessel situated and destined as she was.

Capt. Bangs, of the schooner, says: (*Int.* 8, *Mar.* 54.) "At the time of the collision I was steering southeast by south-half-south." (*Int.* 50, *Mar.* 64.) "The usual course from Presque Isle to Thunder Bay was southeast by south. I was pretty well out in the lake and wished to haul close under the land. About six o'clock I altered the course about half a point to the southard." He further says: (*Cross Int.* 77, *Mar.* 81.) "I changed my course about six o'clock. I can't say at what point it was, it might have been about twelve miles past Presque Isle."

McSherry, the lookout on the schooner, says: (*Cross Int.* 25 *and* 26, *Mar.* 107.) "I can't state whether her course was changed or not at any time previous to the collision, and during my lookout from six to eight. I do not know whether she was kept on her course previous to the collision or not. I could not say, I was forward all the time."

Anderson, the mate of the schooner, (*Int.* 53, *Mar.* 120,) when asked whether the schooner was on her true course at the time of the collision, says: "As far I know, she was. I was below." (*Int.* 42.) He says he went below at a quarter past six.

This comprises all the evidence furnished by the libellants on this subject, and from this it appears that McSherry, the lookout, and Anderson, the mate, know absolutely nothing about what course the schooner was steering, and Bangs, the captain, says that he was steering his course southeast by south-half-south, but when we bring him to particulars he only knows that at six o'clock, an hour and a half before the collision, he directed the man at the wheel to steer southeast by south half south; he makes no mention of any other order to the man at the wheel. The libellants well knew that it was important for them to have it appear that the schooner did not change her course, but advised of Capt. Bangs' inability to help them in that regard, they dare not ask him if he saw the compass after the order was given at six o'clock, or if he inquired of the man at the wheel how she was heading. The full extent of his evidence is, that at six o'clock he gave the man at the wheel orders to steer southeast by south-half-south, and supposes that he so continued to steer, but in fact beyond this knows nothing about it. The state of doubt he is in on that subject clearly appears in his communication to the officers of the propeller Iowa, who picked him up the next day, and while the affair was fresh in his mind.

(*Mar.* 220.) Capt. Jones says he asked Capt. Bangs if he altered his course. He said in reply, that "he did not give any orders to alter her course; that his vessel steered wild and might have yawed off with him." Capt. Bangs also told the mate

of the Iowa at the same time, that his "vessel steered very badly." (*Mar.* 214.)

As a witness on the stand, or in his conversation with Jones and Arthur, does Capt. Bangs, of the schooner, use the language of an assured man on this subject? Does he say, No, sir, there was no change of course made, as he would, had he known that fact from the compass? On the contrary, is not his silence in regard to so important a matter, coupled with his admission to Jones soon after the collision, that while he did not give any order to change her course, she might have yawed off with him, conclusive that in his own mind he was not clear on the subject?

We have previously demonstrated that the propeller was heading north at the time of the collision Capt. Bangs, of the schooner, is mistaken, if, indeed, he anywhere means to say that the schooner did not change her course,—for if the propeller was heading north, then the schooner, approaching at right-angles, was heading east, not slightly off her true course, and the course she supposed she was going, but *five and a half points.* Will libellants say that we had not changed, and were, at the time of the collision, still heading northwest? Then it follows that the schooner approaching at right-angles, was four points further still from her course, making *nine and one half points* of deviation. How does it stand on the evidence of Bangs alone, their only witness to sustain their claim of being on their course? He swears positively, and is clearly confirmed by all on the deck of his vessel, that the schooner approached the steamer at right-angles, which would convict him of being, in one case five and a half points off his course, and in the other nine and a half. Against this positive statement of Bangs, is arrayed the negative one that he gave no order after six o'clock, for change of course, and his admission that the schooner steered wild, and might have yawed off with him. If Bangs is to be believed when dubious and uncertain, how much more when he is clear and explicit; and must we not accept the inevitable physical deduction from his statement of fact, which deduction is beyond his control, and was probably not in his mind at the time.

We come now to consider the testimony of Walter Ellis, their own wheelsman. And here let us say, that it is much against the libellants that they did not retain this witness,—they must have been aware that he, more than any one else, knew what was so important to them, viz: how the schooner was steered previously to the collision. Yet he swears (*Mar.* 423, 1*st re-direct int.*) that after he returned to Chicago, subsequent to the loss of the schooner, neither libellant, nor any one for him, requested him to give his testimony, or to remain at Chicago for the purpose of giving it. Feeling the weight of this, they attempt to furnish an excuse for not retaining him, in the evidence of their mate, Anderson.

(*Mar.* 135, *Int.* 91.) They ask Anderson as follows: "Did you at any time before this last trip, have any conversation with Walter Ellis, the man who was at the wheel at the time of the collision, as to what his movements would be on his return to Chicago? If so, state what he said."

Ans. "He told me he was going to New Orleans as soon as he got back, on account of his losing all his clothes on the Caledonia; he could not stop in Chicago during the cold weather."

At the time of this alleged communication to Anderson, Ellis' clothes were safe in the forecastle—certainly they had not been lost on the Caledonia, for the Caledonia was then in port, it being before she had started on her last trip below; consequently Anderson's story is a falsehood, which does not relieve the libellants for not producing Ellis, but begets further suspicion in that regard. Eighteen months afterwards Ellis returns to Chicago, and is first heard of in the society of the libellant, who informs him through his proctor (*Mar.* 421), that he shall call him as a witness in three or four days, but allows ten days to pass without manifesting any intention of doing so, when Ellis, was called by the appellant.

Ellis says, (*Mar.* 446), "I went to the wheel at six o'clock, on the evening of the collision, and the man at the wheel gave me the course, southeast by south a half south. I steered that

direction about an hour and a quarter, as near as I can tell. The Captain asked me if I did not see a light; I told him I did not. Then I stood on my toes, and I saw a little glimmer of light, and I told him; he then told me to steer for that light. I steered for the light until the boat blew her whistle." (*Int.* 9). After the Captain told me to steer for the light, he never told me any course; he told me to steer for the light, and I steered for the light. I kept the light he told me to steer for, until the whistle blew,—the light I steered for was on the boat I struck."

Here we have the explicit statement of their own wheelsman, that by order of his captain he steered for a light which turned out to be the propeller's light,—thus running the propeller down in the middle of the lake. This terrible blunder could have been avoided by one usual precaution among sailors,—after directing the man at the wheel to steer for the light, if the captain had called for her course by the compass, and then in a moment taken her bearings again, he would have ascertained that it was a moving light towards which he was heading, and not Thunder Bay Island light, which he undoubtedly supposed it was. Probably the reason that he neglected this precaution is, that he found the light he steered for, in the direction he expected to make Thunder Bay Island light; but about the locality of Thunder Bay Island light, he might easily be mistaken; it was a dark, rainy night, his vessel steered badly, and he himself informs us (*Mar. Int.* 3) that he never before commanded a vessel below the Straits of Mackinaw, hence it was all new ground to him. But for whatever reason, certain it is that he did not take this precaution, for nowhere in his testimony does he say that after six o'clock he called for the bearings of the vessel; the reason why he did not, is furnished by Ellis, the wheelsman, and is a confirmation of Ellis's evidence; it is that he was heading her for an object, and not by the compass, and hence so long as the object was before him, paid no heed to the compass.

Knowing the angles at which two vessels approach each other, when the course of one is proved, the same proof becomes evidence, and fixes the course the other is pursuing.

We have, then:

1st. The unimpeached testimony of Capt. Warren and the wheelsman, Brusau, as to the course of the propeller.

2d. The angle of the schooner's approach, given by all on board the schooner.

3d. The testimony of Walter Ellis, the schooner's wheelsman. Establishing, with the united strength of human testimony, and inevitable deduction from the angle of approach, that the schooner could not have been on her course, southeast and by south half south, at the time of the collision. And this is really the only question in the case, for if the propeller was right, and the schooner wrong, in this first great precautionary step, subsequent mistakes on the part of the propeller, if there were any, will be treated very kindly, and the schooner held responsible for all the consequences flowing from this original blunder.

In the argument of this cause in the court below, one point relied upon, was that the propeller had an insufficient lookout, for it appears that the lookout on the propeller did not discover the schooner's light *immediately* preceding the collision, until too late to take any measures to avoid her. It is in evidence that the schooner had an old-fashioned light placed on the pawl bit, and probably as good as is carried by vessels of her class. That this is an unfit place to carry a light, being too far aft, is evident from the change made throughout the lakes this summer, requiring all sailing vessels to place their light further forward; besides, there is much evidence in the case showing that a vessel's head sails, and bowsprit, if she were coming dead on, would tend to hide her light, certainly, if ever, in a case where the vessel was steering directly for the propeller.

It appears from Capt. Warren's evidence (*Mar.* 169), that from six to eight he was engaged on the lookout, with nothing else to do, sometimes in the pilot house, and sometimes forward of the

pilot house; he also says that forward of the pilot house is the best place for a lookout, but that there is an advantage in changing position from the deck to the pilot house. (*Mar.* 555.)

The mate, Baldwin says, (*Int.* 64–67 *Mar.* 505), that the pilot house on the Ottawa is the best place for a lookout,—that it is higher, well forward, and gives an unobstructed view.

Some cases decided in this court are relied on as showing that the pilot house is not the proper place for a lookout; in the case of *Haney vs. Baltimore Steam Packet Co.*, 23 *How.*, 287, the pilot house was sixty feet from the bow of the steamer; on the propeller Ottawa it is less than twenty. It seems to us that this can never be settled as matter of law, but must be determined in each case as matter of fact, according to the construction of the particular boat; and while it may be true as a general proposition, that the pilot house is not the best place for a lookout to stand all the time, it may yet be true that resorting to it temporarily, for a change of position, might be highly advisable, as an object that escapes detection from one point, may be readily seen from another of a higher or lower altitude.

But let us inquire in what position the libelant is to exact this extraordinary degree of diligence in regard to lookouts made necessary by his own negligence and violation of the first great rule governing the approach of vessels.

It is in evidence that the propeller's lights were burning well, and in their proper places. Thomas Lock, the porter of the propeller says:—

On Sunday, the 16th of September, I trimmed and prepared the propeller's lights. She had kerosene oil lights; one was white, one green and one red. I lighted them before dark. I placed the white light on top the pilot house; I placed the red light on the left hand side, and the green light on the right hand side, going up from the after part of the boat. Afterwards, I saw them several times, they were all in good condition. There was a regular and

fixed place for the signal lights on the propeller, and I placed them in their proper places. (*Mar.* 154). I saw the lights seven or eight minutes before the collision, and they were burning brightly. I saw the lights burning after the vessel ran into us.

Captain Warren says: (*Mar.* 169).

The propeller Ottawa carried a red light on her larboard side, a green light on her starboard side, and a bright light forward midships. On the night of the collision, her different lights were in their proper places, and in good condition, all burning first-rate.

Richard Brusau says: (*Mar.* 161).

From where I stood, I could see the signal lights of the Ottawa. There was a bright light on top the pilot house, the red light on our larboard side, and the green light on our starboard side. They were put in their places on that night, just at dusk, I should judge. (*Mar.* 162). I saw the signal lights of the propeller that evening often enough; they stood right before me all the time; I could not help but see them. They were burning good; I saw them two or three minutes before the collision. (*Mar.* 166). I stood on the larboard side of the wheel house, with my back towards the window of the wheel house. (*Mar.* 165). When standing at the wheel, I could see the red light, and the reflections of the bright light; (*Mar.* 166), by turning round, I could see the reflection of all three lights.

(*Mar.* 516 & 517). George Baldwin, mate of the propeller, says: That when the collision occurred, he was in bed; that within three or four minutes, he proceeded at once on deck, and found the red signal light burning.

Captain John Wilson, of the propeller Foss, (*Mar.* 204), says that during the season of 1860 he was in the same trade as the propeller Ottawa; that he often met her by night, and found her lights always very bright, good lights.

Here we have the testimony of five different persons, as to the character of the propeller's lights. In addition to this, we have the evidence of Walter Ellis, the wheelsman of the schooner, that for sometime before the collision, he steered by the propeller's light.

Also, Capt. Bangs of the schooner says: That he saw the propeller's light ahead, and went forward to see what kind of a vessel it was. Yet, notwithstanding all this, McSherry, the lookout on the schooner, did not see the propeller's lights until within twenty feet of her. (*Cross Int.* 7, *Mar.* 104). "The propeller was crossing our bows. She was not much more than twenty feet off when I saw the light."

The point of libellant's argument is; that owing to our lookout being some of the time in a bad locality, he neglected to discover their one light; for this there may be some excuse found in the fact that the schooner was steering right for us, thus hiding her own light; but in their case there was no obstacle intervening; two, at least, of our three lights could have been seen by their lookout, had he been vigilant. But the court will not split hairs in weighing nice differences of neglect between approaching vessels, that are right upon each other, in a dark night, but will ask, *how came they in such dangerous proximity*, and will hold that that one shall suffer, by whose wrongful act they were thus placed; otherwise, the vessel violating this first great and salutary rule regulating the approach of vessels, proceeds under no disadvantage, but is still allowed, as if with clean hands, to demand exceeding diligence of the opposing vessel; when, but for her own wrongful act, no occasion for such questions would, or could have arisen.

The rule that a steamer shall change her course so as to avoid the course of the sail vessel, seems to have received a popular construction, of which even courts are not free, to the effect that steamers are to keep out of the way of sail vessels, in any event; hence, in any collision whatever, it appears they have not done so, otherwise the collision would not have occurred; *ergo*, the steamer is wrong. Extend the present case a little as an illustration of the

absurdity of any such construction. Suppose that after the propeller had discovered the schooner's light, and changed her course to avoid it; finding the schooner still approaching had made another change, but failed to discover the schooner's light in time to make a third change. With these accumulated faults on her head, shall the schooner be heard to question the care and skill of the steamer? And if not for failing to avoid her the third time, why for the second? In the present case, if the schooner was steering for the propeller's light, no degree of diligence could have saved the propeller, as with crowded canvas the schooner sped on her errand of destruction. The law is that when the propeller had in due time made the first change of course she did her whole duty.

The testimony of James Williams, one of the wheelsmen on the propeller, has been taken at great length in this case. We have made no reference to it because the story he tells is so improbable that it cannot be believed unless supported by other witnesses. But when to the improbability of his narration we add the fact that he is to a greater or less extent impeached by every witness on both sides, we deem no apology necessary for not considering his evidence in the argument of the main questions of this case, but will now devote a short space to him exclusively.

(*Mar.* 242.) His statement is that on the evening of the collision he was relieved from the wheel about six o'clock by Brusau, went to his room, began to read a song book, and the clothes began to fall down, and he went to picking them up and putting them in the bunk. That he remained there until just before the collision, when a deck hand came and said Brusau wanted him at the wheel. That he then went out of his room (which was on the larboard side), looked to see if the larboard light was lit, which was nearly over the door, saw that it was not lit, and as he went around forward he looked on top of the pilot house to see if the bright light was lit, but could not see anything of the bright light, it was not burning. He then says, as I went round I looked to see if the light was burning on the starboard side, but saw nothing there. I then opened the door and saw the bright light sitting in the pilot

house. It was lit, but the minute I opened the door the wind blew it out. I took hold of the wheel with Brusau. He said she was hard to steer. I had not been at the wheel more than three minutes when the collision occurred.

If this statement can be believed, the propeller at an early hour in the evening was going through Lake Huron without a signal light burning, although the red and green lanterns were in their places and the bright light had been taken from its place and put in the pilot house—thus showing that all the lights had that evening been put in their proper places, and probably not an hour previously. We are asked to credit this extraordinary statement that they were all out at once. We shall first collect the witnesses by whom he is impeached, and next expose the contradictions in Williams' story, taken by itself.

The collision did not happen in his watch, and he must give some explanation of his being on deck in the night and out of his watch, which he does by telling a falsehood.

He is asked: "Who came to notify you that you were wanted at the wheel?"

Answer—"It was a Frenchman—a deck hand—his name is Aleck." (*Mar.* 286.)

When we turn to the testimony of Alexander Morrisette, he says: He was a deck hand on the propeller at the time of the collision. (*Mar.* 466.) That when the collision occurred he was between decks, asleep; that the whistle awoke him; that he had his clothes all on but his boots, and that while putting those on the collision took place. (*Mar.* 467.) And that he did not at any time that evening go to Jim Williams' room, or any where else to call him. Now, Alexander Morrisette might possibly be mistaken about calling Williams, but he could not be so in regard to the fact of being asleep when the collision occurred, which would make it impossible that he should have called Williams. Morrisette's positive statement, fortified by such a fact is insurmountable, and is conclusive that he did not call Williams.

The testimony of Thomas Lock, the porter of the propeller, has already been stated. (*Mar.* 152.) It is to the effect that just before dark on the night of the collision he lighted the signal lights and placed them in their respective positions; that he saw them seven or eight minutes before the collision and then they were burning brightly.

Captain Warren says: (*Mar.* 169.) On the night of the collision the propeller's different lights were in their proper places, and in good condition, all burning first rate. (*Mar.* 560, *Int.* 47.) And that when he run to the pilot house, to blow the whistle the instant of the collision, Richard Brusau was there, and *no one* else.

(*Mar.* 335, Int. 336.) Williams says: The first person he saw after the collision was the mate, George Baldwin, who came running to the pilot house. (*Int.* 330.) He says that no one came to the pilot house from the time the mate came in, after the collision, until Brusau left.

Morrisette, (*Mar.* 476, *Int.* 28,) says: That at the time of the collision he got up, put on his boots, went to the engine room and then went to the pilot house, where Brusau asked him to take the wheel until he could go and see whether the boat was hurt. He makes no mention of seeing Williams at the wheel, but, on the contrary, it seems that he could not be there, or why should Brusau ask Morrisette to take the wheel when the propeller was lying still? Would he have done so if Williams, the regular wheelsman was by his side? and Morrisette's statement that he did go to pilot house and found Brusau there, is an exact contradiction of Williams' statement that no one came to the pilot house until after Brusau left.

Richard Brusau, the wheelsman says: (*Mar.* 161, 162), "I saw the signal lights of the propeller two or three minutes before the collision; they were burning good." Both of which statements are flat contradictions of Williams' story, that the lights were all out at the time of the collision. (*Int.* 158, *Mar.* 298). Williams is asked

what was the first intimation he had of the collision; he says: "I believe it was the mate who came running there—George Baldwin was his name—and grabbed hold of the whistle rope, and blowed the whistle; this was after they struck. It was a very short time after they struck; it could not have been over a minute or two." Now George Baldwin says, (*Mar.* 496), that at the time of the collision, he was in bed, and that the noise of the collision woke him up, and that he got up and went aft. We would here remark that it is highly probable that he was abed, as it was not his watch on deck.

Baldwin further says, (*from 17th Int. to 25th*), that he went from aft, after hammer, nails and saw, and that he did not finally go on deck until the engine was ready to start; that he then went to the pilot house, and that this was twenty or twenty-five minutes after the collision, and was the first time he went to the pilot house, which is a direct contradiction of Williams' statement that Baldwin came running to the pilot house, and blew the whistle *immediately* after the collision.

Williams says: (*Mar.* 243, *Int.* 7), "I stayed at the wheel, and the engine was stopped, and we lay there drifting. The captain, and the mate, and some deck hands came out forward, and were working to keep the lights lit."

Baldwin is the mate referred to, and says, (*Int.* 55, *Mar.* 504), "that he did not at any time, before or after the collision, on that evening, go forward, either alone, or with the captain and deck hands, or with the captain alone, or with the deck hands alone, to trim lights."

Baldwin further says: (*Cross Int.* 59, *Mar.* 516), that when he went up for the saw and hammer, he passed right under the red signal light, and it was burning. This was three or four minutes after the collision, and is contradictory of Williams' story, as it is almost incredible that the red light should have been burning three or four minutes after the collision, and yet been out at the time of the collision.

On the same point we have, of the libellant's witnesses on board the schooner, McSherry, who says: (*Mar.* 99), "The propeller was coming right ahead, with a red light a little on our starboard bow."

Bangs, who says: (*Mar.* 55), "I went forward to see if I could distinguish the vessel by the time I got forward; I was looking for the light—*it was a red light.* I heard one blow of a steamer's whistle, etc."

Bangs told Capt. Jones, (*Mar.* 220), "that he saw the propeller's bright light and red light about two points on the port bow, about half an hour before the collision."

The admissions of the master are to be received as evidence against the owners. *The Enterprise* 2 *Car. Ct. Ct.*, 320; *the Manchester* 1 *Wm. Rob.*, 63, where Dr. Lushington allowed them in a cause of collision.

Then we have Walter Ellis' statement before referred to, that by the Captain's order he steered for the propeller's light for half an hour before the collision.

The next point to which we invite attention, and wherein Williams is abundantly impeached, is in regard to the blowing of the propeller's whistle. On this subject Williams says, (*Cross Int.* 158, to 161, *Mar.* 298), in substance, the first notice I had of the collision, was George Baldwin's blowing the whistle; this was a minute or two *after* they struck; he nowhere retracts this statement.

Capt. Warren says: (*Int.* 50, *Mar.* 560), I blew the whistle a few seconds before the collision, five or six seconds.

Alexander Morrisette says: (*Mar.* 466), that the whistle woke him up, and that was before the collision.

Richard Brusau says: (*Mar.* 160), the Captain stood right by him, blowing the whistle, before the vessel struck; he says the Captain blew it four or five minutes; he is probably mistaken about

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the time, as the other witnesses measure the time by facts, and agree that it was a few seconds only; however that may be, it confirms the other testimony, and contradicts Williams' statement, that the whistle was blown after the collision.

W. E. Parsons, engineer of the propeller, a witness for libellants, says: (*Cross Int.* 51, *Mar.* 408), I was in the engine room when the collision occurred, and heard the whistle blow; it blew some minutes before the collision.

Capt. Bangs, of the schooner, says: (*Int.* 28, *Mar.* 58), It was half a minute, or a few seconds after the whistle sounded, that the collision took place, (*Mar.* 55). "I heard one blow of a steamer's whistle, and immediately ordered the helm aport. As she was swinging, she collided with the propeller."

Anderson, the mate of the schooner, says: (*Int.* 14, *Mar.* 113,) I was in the cabin just before the collision took place; the first thing I heard was the whistle. I came right up, and the collision occurred in about two seconds. When I came up, the propeller's bow was about ten feet on our larboard bow.

McSherry, the schooner's lookout, says: (*Mar.* 99), "The propeller blew her whistle; I heard the whistle a few seconds after I sang out to the Captain, and she was right down on us in no time; the whistle sounded once.

Walter Ellis, the wheelsman of the schooner says: (*Mar.* 446), "I steered for the light until the boat blew her whistle; the Captain told me to put my wheel up, and I put it up. The Captain run forward and called out to the man at the lookout. Mr. Anderson, the mate, jumped out of the cabin, and told me to put my wheel down; I put my wheel down, and the vessel struck the boat."

Here we have the testimony of Warren, Brusau, Morrisette and Baldwin, witnesses for the defendant, and of Parsons, Bangs, Anderson and McSherry, witnesses for the libelant, directly contradicting Williams about the whistle; many of them fortifying

their statement by narration of facts which admit of no mistake. These eight witnesses include all except one, on board both vessels, who knew anything of the facts and testify in the case.

But Williams as if unwilling to leave us in doubt of his shameless disregard of truth, has not only run counter of the statements of all the living witnesses, but has thoroughly impeached himself by the contradictions of his own single statement, which thicken about his path as he goes on, well illustrating the adage that "a man never tells one falsehood but that he is compelled to tell two more to extricate himself." (*Mar.* 310.) He informs us that when Aleck, the Frenchman, called him it was in a hurried manner, and that he told him that Dick (Brusau) wanted him, (Williams) *right away*, and that he went right off, did not stop to put his coat on; and yet in this haste he says: He went forward to within four or five feet of the stem so that he might see whether the bright light on top of the pilot house was lighted, and that he looked at both the red and green lights on his way to the pilot house. When asked if this was the business of the wheelman, he says: (*Cross Int.* 219,) that it is not. When asked why he did it then? he says: (*Cross Int.* 126.) that the first man he ever wheeled with on the Lakes told him to do so, and that he followed his example, and says, "I go and tell the porter when they are not burning." He is then asked what he did in this case when he found that the lights were not burning, and he answers as follows: (*Cross Int.* 127) "I went into the pilot house and took the wheel,—I thought it was better for me to do that than to hunt the porter up." As the reason he assigns for going out of his way to attend to duties not his own, turns out to be false, we may conclude that the whole thing is an invention of the witness. The same remark applies to his statement in (*Cross Int's* 224 *and* 225,) where he states that if he found the lights out, and not too busy he would go and tell the porter, but that on this night he was too busy, hence his reason fails for the steps he professes to have taken, and throws suspicion over the whole statement.

However little regard for truth Williams may be supposed to have, it is presumed that he would entertain some at least for his own life, and can it be believed for a moment that on reaching the

unsafe with such a miscreant at large. The merits of a case requiring the introduction of such a witness, it is not ours, but the province of the court to pronounce.

We shall close our argument with a discussion of the testimony of Walter Ellis, the wheelsman of the schooner. We have previously commented upon the fact, that notwithstanding Walter Ellis was the most important witness that could be produced by the libellants, they made no effort to retain him, at the time of the collision, although they did retain other witnesses. We have already called attention to their false explanation of his absence by Anderson, and that when, a year and a half afterwards, they had another opportunity of securing his evidence, they declined, or neglected to do so; after all this, he comes to the hands of the respondent, and the story he tells is this: That at the time of the collision he was at the wheel of the schooner, and had been so stationed since six o'clock, which would be about an hour and a half; that about half an hour previous to the collision, the Captain pointed out a light, and directed him to steer for it; that he did so, which light he says turned out to be the propeller's light. We will inquire first, by what and whom Walter Ellis is sustained, and secondly, consider the objections to his testimony.

Let it be remembered that Capt. Bangs, of the schooner, says: (*Int.* 8), "At the time of the collision, I was steering my course down along the land on Lake Huron, running for Thunder Bay Island light." Then it seems that he was running for some light, and Walter Ellis' story becomes greatly more probable than as though they had been in the middle of the lake, running by courses, and remote from lights. It is also certain that in running for a light, he collided with the steamer, which makes it possible, indeed very probable, that he was mistaken, and that in fact he was steering for the propeller's light, when he supposed he was running for Thunder Bay light; he gives no observations of the compass to rebut this presumption.

Ellis is supported by Thomas Ritchie, who says: (*Mar.* 456), "I had a conversation with Ellis, at Mobile, Ala., in October, 1860, concerning the loss of the Caledonia; he said he was very unfortunate; he had lost all his clothes; he said he was on the Caledonia, and got run into by a propeller. The Captain told him to steer for a light, and it was the propeller's light." (*Cross Int.* 7), "He told me the Captain told him to steer for a light, and that it was the propeller's light; he told me it turned out to be a propeller's light."

Here we have the relation of Ellis to his companion, Ritchie, made within two months after the collision, thousands of miles from Chicago, and when no motive can be conceived that should induce him to speak aught but the truth; it was before Ellis had ever been used as a witness in the case, and when it was very improbable that he ever would be. It becomes a strong confirmation of Ellis' statement, and is within the rule of law. That where it is attempted to impeach a witness, or contradict him by cross examination, evidence that he has given the same relation at other times, is admissable to sustain him. *The people vs. Vane*, 12 *Wend.* 78. Where that relation was made a great distance from, and long before the trial, and evidently without purpose, it becomes a much stronger confirmation.

We have another support of Ellis of the same character, in Capt Flood's evidence, who says that in Nov. 1861, (*Mar.* 570,) Ellis went one trip on his vessel, the Lizzie Throop—that some conversation was had about the Caledonia, when he asked Ellis how they got foul of the steamer, he replied, that the Captain of the Caledonia asked him if he saw a light, and he said he did not; and then the Captain told him to keep her off until he did see the light. He kept off till he did see the light and then the Captain told him to steady her for the light, that it was "Thunder Bay Island light." This was many months before Ellis was put on the stand and when no motive of corroboration could have been in his mind, for as appears by his testimony, he was an entire stranger at that time to the respondent. No doubt that Captain Flood's statement contains the true explanation of the collision. By that it

appears that Bangs told Ellis, when directing him to steer for the light, that it was Thunder Bay Island light, he unquestionably thought it was, and being assured in that conclusion by his vicinity to Thunder Bay, took no bearings, and hence the mistake he made.

We next hear of Ellis in the office of the Proctor for libelant, (*Mar.* 452, *Cross Int.* 10,) where he is asked the following question:

"Did you not in a conversation with the proctor for the libelant in this case, which took place some ten days since, say that the light which you mentioned as having kept in view was directly ahead and right in the course you were then steering, &c., &c." Let it be borne in mind that this was ten days before the witness was put on the stand by the respondents, and as the witness swears some days before he saw or knew any one connected with the defence. Then we have the fact that after the long absence of Ellis, the first time he is interrogated on the subject of the collision, he makes a relation to the libelants themselves, which to the extent it goes confirms the evidence he gave on the stand. (*Int.* 10, *re-ex. Marginal page* 419,) the witness tells us what further he said to the proctor for the libelant, it is as follows: "I consented to make a statement. I did not state that the course of the Caledonia was not changed. The course was not changed to my recollection. I steered for the light and not by the compass. The Captain never told me, and I did not know whether she was going her course or not." One portion of Ellis' narrative is confirmed by the question put by the proctor for the libelant. Why shall we reject the balance? It furnishes an explanation of the disaster consistent with the physical facts of the case. Besides, this part of his story is confirmed by Capt. Bangs, of the schooner. Ellis says that when he went to the wheel at six o'clock, the man whom he succeeded gave him the course as S. E. by S. $\frac{1}{2}$ S. This is the course that Capt. Bangs says he was pursuing at that time. Ellis says that after the Captain pointed out the light he steered for the light; that the Captain never told him, and that he did not know whether she was on her course or not. Does Bangs anywhere say that he did know whether she was on her course or not, or that he made any

inquiry to a certain? Certainly he does not. If two witnesses confirm each other up to a certain point, as Bangs and Ellis do, and there the knowledge of one ceases, we find ourselves inclined to receive with continuing confidence the narration of the other.

The strongest confirmation of Ellis is to be found in the physical facts before alluded to. If Capt. Warren, and Brusau, of the propeller, tell the truth when they say that previous to the collision, the propeller's course was changed from northwest to north, and the witnesses on the schooner are to be believed when they say that the schooner approached the propeller at right angles, then it must have been by steering for the propeller's light that the collision occurred; as to thus strike would take the schooner so much off her alleged course of southeast by south ½ south, that it becomes exceedingly improbable that she was pursuing that course at all, but on the contrary highly probable that she was steering some other course, or for some object. If it is insisted that the propeller had not changed her course to north, but was still heading northwest, the confirmation of Ellis becomes much stronger, as the schooner would be still more off her alleged course of southeast by south ½ south. In other words, all the evidence in the case, tending to show that the schooner was not on her course, southeast by south ½ south, is confirmatory of Ellis' evidence, because his statement of facts make it a necessity that the schooner, in pursuit of the propeller's light should have gradually deviated from her course and deviated exactly as the angle of approach given, indicates.

In the way of objection to Walter Ellis' testimony, it has been urged that the protest to which he subscribed, is contradictory of his narration as a witness; the narration of the protest is as follows: "About seven o'clock, P. M., made Thunder Bay Island light, bearing south about eight miles distant, steering southeast by south ½ south." It is said by the appellants. Here is Ellis' statement that about half an hour before the collision he was steering southeast by south ½ south, which is evidence that the schooner was on her course.

The answer is, first, that Ellis in his testimony, (*Mar.* 446), says he went to the wheel at six o'clock, and fixes the time when he began to steer for the light (and hence the beginning of the deviation) at an hour and a quarter after he went to the wheel, which would bring it at a quarter past seven, hence it is no contradiction of this statement to assert that the schooner was on her course at seven. Any one familiar with the general careless mode of taking protests, would not give much weight to them. Take this case as an instance: Every man on board the schooner, from the Captain down, made oath to this protest; yet one was forward, some in the cabin, and some in their bunks, and could not possibly have been personally cognizant of the course they were steering, nor of other facts set forth in the protest. We do not suppose they intended to subscribe to a falsehood; but when they came to make the protest, the Captain undoubtedly said to them that at six o'clock he gave the order to steer southeast by south half south, and supposed she continued on that course, which supposition was adopted by the whole crew, and incorporated into the protest; when afterwards we come to their testimony, no one out of all on board, is able to show any personal knowledge as to the course that evening, later than six o'clock.

The fact that the schooner was running for a light at the time of the collision is not disputed in the protest. It is very plain that making this light, and steering for it when on a course southeast by south a half south, the divergence would be so gradual that they might well suppose they were not changing their course, and hence their statement to that effect, not fortified by personal inspection of the compass, would be no evidence of the fact, and no contradiction of a theory based upon the ground that they did change; undoubtedly, Ellis, at the time was not conscious of any change of course, nor has he ever said that he changed his course, but he gives facts, which, when we come to know the course of the light he steered for, makes a deviation by the schooner absolutely certain.

It is next urged against Ellis that to some extent he is impeached by Charles A. Stewart, the son of the libelant. We claim

that in this testimony there is not only a want of compliance with the legal rule of impeachment, but an absence of all moral tendency to that end. They seek to show by Charles A. Stewart, that soon after the collision, the witness Ellis demanded of the libelant pay for clothes he had lost on the schooner, and said he would have it out of somebody, and thus stamp Ellis as being actuated by a dishonest purpose. Such *admissions*, not connected with matters material to the case, should be received with great suspicion. Their value in this case can be determined by the course Ellis pursued. The witness, Charles A. Stewart, says Ellis demanded pay of the libelant for his clothes before he signed the protest. Yet we find that without pay he did sign the protest, and that after signing it he went south where he remained a year, and did not go to the appellant and offer his evidence against the libelant, thus showing that the motive assigned to him by Charles A. Stewart, had in fact no influence on his conduct. On his return from the South he is not found seeking the appellant, but goes to the libelant, who informs him that he shall use him as a witness, thus showing that his confidence is not impaired by all this talk about pay for clothes. The same comments apply to the statement made by the witness to the libelant's proctor about pay for his clothes.

Walter Ellis' evidence cannot be met by this sort of attack. The question is not whether in some matters of slight importance our confidence in his story is impaired, but whether the main facts of his narration are confirmed by the history of the case, and present an explanation of the collision more reasonable and probable than any other furnished. Some theory in regard to this collision must be adopted. It would be remarkable indeed, if one against which nothing can be said could be found; nor is it safe to refuse the most probable explanation in obedience to some general notion, that sailors are not to be believed. Says a learned man, "General maxims do sometimes greatly mislead us."

It would be easy to extend this argument by discussing immaterial matters that have been thrust into the case by both sides, such as the evidence of Peter Mowat of the bark Arabia, going to

show that sometime *after* the collision, the Ottawa did not show her proper lights; or the evidence of W. E. Parsons, going to show that long before the collision, Captain Warren, of the Ottawa, played cards on one occasion, when he should have been doing something else, or in discussing what is the best post for a lookout; all these matters are frivolous, in comparison with the great question which must determine this case. Did the propeller observe the nautical rule, and change her course? Did the schooner observe the nautical rule, and steadily keep her course?

In conclusion we submit that we have established the following positions:

First.—That both vessels were traversing a well known highway, where the usual courses are known to all sailors.

Second.—That no circumstances existed, or are alleged, making it difficult for both vessels to observe the usual rule, and that each had a legal right to expect the other so to do.

Third. That on the approach of the two vessels the propeller, in abundant time, changed her course to avoid the schooner's line of approach, which is established by Warren and Brusau, and contradicted by no one.

Fourth. That the schooner did not adhere to her course as it was her duty to do—but deviated from it—which is proved by Walter Ellis, and her angle of approach towards the propeller as given by *every witness on both vessels.*

We insist that this original blunder from which the collision followed, being fixed upon the schooner, the judgment of the Court must be against the schooner.

WALKER & DEXTER,

[redacted]

Counsel for Appellant.

Morning Light, 2 Wall. 558

SUPREME COURT OF THE UNITED STATES.

THE PROPELLER OTTAWA, &c.,
MARTIN RYERSON, CLAIMANT & APPELLANT,
vs.
ROBERT STEWART,
THE PACIFIC MUTUAL INSURANCE CO., &
THE ARCTIC INSURANCE CO., OF N.Y.,

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

APPELLEE'S BRIEF AND ARGUMENT.

GEO. H. FERGUS, PRINTER, 12 CLARK STREET.

S

SUPREME COURT OF THE UNITED STATES.

ROBERT STEWART, APPELLEE,
ats.
PROPELLER OTTAWA, *et al.*, APPELLANTS.
} APPEAL, &c.

STATEMENT OF CASE.

This was a case of collision, which occurred on Lake Huron, about 8 miles north of Thunder Bay Island, about 8 o'clock in the evening of Sunday, the 16th day of September, A.D. 1860, between the said propeller Ottawa, and the schooner Caledonia, which last-named vessel, with her cargo, was owned by the said Robert Stewart, Appellee: the propeller, "in ballast," was bound up the Lake, and the schooner was bound down the Lake, with a cargo of 6102 bushels of wheat; and by reason of said collision, the said schooner Caledonia and her cargo, valued in all at $10,500, were totally lost.

The Appellee, Robert Stewart, filed his libel against the said propeller Ottawa, in the District Court of the United States, for the Northern District of Illinois, on the 2d day of October, A.D. 1860, in which libel he avers that the collision occurred solely from negligence and want of care, skill, and diligence, on the part of those having the propeller in charge, and he further avers, a strict compliance with the laws regulating navigation, and due diligence and skill on the part of those in charge of the said schooner. Record, page 2.

The Respondents' answer to said libel was filed on the 21st day of November, 1860, thus taking ample time (say 50 days) in which to become acquainted with the facts relating to the collision, so far as the Respondent was concerned. The answer denies that there was any negligence, or want of care, skill, and diligence on the part

of those having the propeller in charge, and it also denies that those having the schooner in charge were attentive to their duties, and vigilant in her navigation; and it further alleges, as follows. Record, page 9, folios 24, 25, and 26:—

"That the propeller about 7 o'clock on Sunday, the 16th of September, 1860, on Lake Huron, not far from Thunder Bay Island Light, *saw a light* nearly ahead, but a little over the larboard bow; that when the said light was first seen by those on board of the propeller, it was from 3 to 4 miles distant; that at the same time the propeller also saw a light on her starboard bow; that the propeller was then steering north-west; that she kept on her course until the light on the starboard bow was abreast of her, which was some time before the collision, and then put her helm aport, so that she headed north; that she kept on this course until the collision occurred; that after she changed her course to north, *she saw the light of the said vessel coming down, &c., &c.*"

On the 22d day of March, 1861, after all the testimony for the Libellant had been taken, the Respondent asked, and obtained leave of said Court, to file an amended answer, and therein averred as follows. Record, page 17, folio 48:—

"That after the propeller changed her course north, she sailed about 15 minutes, and the first thing she saw was a vessel coming down on her port bow; *that the said vessel had no light visible to those on board the propeller, &c., &c.*"

On Record, page 15, folios 40, 41, and 42, will be found stipulations of the parties hereto, that the said schooner Caledonia at the time of her loss was worth $3500; that the wheat at said time, in Chicago was worth 88 cents per bushel, and in Buffalo $1.04 per bushel: gross value in Chicago $5,370.05, gross value in Buffalo, less freight, $6,346.35; that the freight at said time to Buffalo was 14½ cents per bushel; gross freight, $884.84. The case came up for a hearing in the said District Court on the 26th of March, 1861, and was taken under advisement. On the 27th February, 1862, the Court rendered a decree against the propeller Ottawa, for $10,146.08, being the value of said vessel and cargo, as above stipulated, with a small percentage of interest on the same from the time of the commencement of the action, with the costs and charges to be taxed; and the said Court further decreed, that as it appeared by the Record (see page 6, folio 15,) that a petition had been filed in said case by the Pacific Mutual Insurance Co., setting forth that they had paid

the sum of $6500, under an insurance policy on the said wheat, to said Robert Stewart, and it also appearing by the Record (see page 13, folio 35,) that the Arctic Insurance Co. had filed their petition, setting forth that they had paid the sum of $2,067.00 under an insurance policy on the said schooner, to said Robert Stewart, and praying that they might be subrogated to the rights of said Stewart in said case to the extent of the two sums so paid by the said Insurance Companies, that said two Insurance Companies should be made parties to the record, and be jointly interested with the said Stewart in the damages to be recovered against the said propeller. Record, page 77, folio 225.

An appeal from this decree was taken by the Respondent to the United States Circuit Court for said Northern District of Illinois, and additional testimony was taken in the case, by both the Libellant and the Respondent.

On the 24th June, 1863, after all the testimony in the said appeal case had been taken, the Respondent asked and obtained leave of said Circuit Court to file a second amended answer. Record, page 142, folios 427—433.

The case came on for a hearing in said Circuit Court, on the 10th day of July, 1863, and said Court, having taken the matter under advisement, on the 26th day of October, 1863, affirmed the decree of said District Court, together with $1,012.91 interest, and the costs to be taxed in both the District and Circuit Courts, from which said decree of said Circuit Court, the Respondent appeals to this Honorable Court.

Upon the law points in this case, there is no room for argument; therefore we shall merely state them as they arise, and quote the authorities to sustain our several positions; but the evidence in relation to facts is voluminous, and is, as usual in such cases, contradictory, and suggestive of falsehood on one side or the other. In reviewing the testimony in the case, we feel convinced that the Appellants' witnesses, consisting of the captain, mate, and crew of the propeller, are aware of the fact that the collision occurred wholly through their negligence, but they endeavor, in every way, to shirk the responsibility. We will, therefore, as briefly as possible, show the variances in their testimony, amounting frequently to wilful falsehood.

That the collision did occur between these vessels about the time and place mentioned in the libel, and that the night was stormy

and tempestuous, is not contradicted, and in order to decide the question, as to which party was in fault, four points arise, upon which the evidence is based, and the law is definitely laid down in the decisions of this Honorable Court.

First.

Were both vessels, at the time of, and before, the collision, properly manned, and provided with good and sufficient "look-outs" properly stationed?

"To be properly manned, a vessel should, besides the captain of the watch, have one man specially detailed as 'look-out,' and a man at the wheel."

Peck vs. Sanderson, 17 Howard, 180.
Haney vs. Balt. Pkt. Co., 23 Howard, 292.

"There must be a man specially detailed to have a trustworthy and constant look-out, *stationed at a part of the vessel best adapted for that purpose*, and whose *whole* business is to discern vessels ahead or approaching. An omission in case of a collision would be *prima facie* evidence of fault."

New York, et al., vs. Rae, 18 Howard, 225.
St. John vs. Paine, 10 Howard, 585.
Chamberlain, et al., 21 Howard, 570.
Genesee Chief, 12 Howard, 462.
Haney vs. Balt. Pkt. Co., 23 Howard, 292.

"The wheel-house is not a proper place for a look-out."

St. John vs. Paine, 10 Howard, 585.
Chamberlain et al. 21 " 570.
Genesee Chief, 12 " 463.
New York et al. vs. Rae, 18 " 225.
Haney vs. Balt. Pkt. Co., 23 " 292.

On the part of the propeller, by their own witnesses, they show that neither of these provisions of the law were complied with; they state that there were but two men on deck, viz., the captain and the man at the wheel; the captain was acting, at the time, as captain of the watch, also as look-out, also directing the wheelsman, ringing the bells, blowing the whistle, attending to the courses of the steamer, and having a general supervision over her.

Brosaw, Testimony, Record, page 58, Int. 20.
Warren, " " " 59, " 3—5.
" " " " 183, " 2—5.

But admitting that he was a sufficient look-out, by his own showing he was not stationed as required by law; he says, in answer to 5th Int., page 59:—"I was on the look-out all the time, *in the wheel-house* about a quarter of the time;" and Brosaw, his wheelsman, says, in answer to 9th direct Int., page 57:—"In the fore part of my watch, he was forward on the forecastle deck; *the latter part, he was in the pilot-house, he stood right by me.*"

But we deny that the captain was on deck at all, and claim that until a few moments before the collision, Brosaw, the wheelsman, was the sole representative of the three required by law, viz.: wheelsman, captain of the watch, and special look-out. And this is proven by the witness Williams, who, at the time of the collision, was also a wheelsman on board of the propeller. He says, in answer to 7th Int. page 82, and 105—107th x-Int'ys., page 97:—that he was sitting in his room, reading; that his watch at the wheel was to commence at 8 o'clock; that about 7¾ o'clock, a man (Dick Morrisette) came to his room. and told him that Brosaw wanted him at the wheel; he went up, and there was no one in or around the pilot-house but Brosaw.

Williams' Testimony,		10th Int.,	Record, page	83.
"	"	157th x-Int.	"	101.
"	"	259—266th "	"	108.
"	"	342—344th "	"	113.

Williams testifies most positively to that fact, and I would submit that his whole testimony will bear the strictest scrutiny; not the least variance or contradiction, on his part, can be found; subjected to a most rigorous examination, commencing on Monday, May 26th, continuing every day through the week, from 10 A.M. to 6 P.M., and concluding on Saturday evening, May 31st, the proctors for the Appellant, under a most rigid cross-examination, of four hundred and fifty questions, were unsuccessful in finding a single point in his evidence upon which he had contradicted himself; his testimony stands out clear and unimpeached. There can be but little doubt that he tells the truth, when he says that, when he went to the wheel-house, Brosaw was the only man in or about the wheel-house.

We claim, therefore, that there was no "look-out," whatever, on board of the propeller, for Brosaw, in answer to the question, "Explain how you stood at the wheel?" 16th direct Int., page 58, replies, "I stood on the larboard side of the wheel-house, *with my back to the window of the wheel-house.*" Remark upon such a condition of things is entirely unnecessary.

The schooner had three men on deck, properly stationed, viz.: Captain Bangs, as captain of the watch, McSherry, as look-out, stationed forward of the windlass, and Ellis, at the wheel.

Bangs' Testimony, Record, page 20, Int'ys. 16 & 17.
McSherry's " " " 35 & 36, Int'ys. 5—8, 18—20.

Second.

Were the proper signal lights burning on both vessels in their proper places?

The schooner had the wind free, and by the laws relating to navigation, she should, under those circumstances, show a "bright" or "white" light.

The first answer of the Respondent (see Record, page 10, folio 25,) states that this light was seen by those on board of the propeller when it was 3 or 4 miles distant. Warren, in answer to x-Int. 13, Record, page 184, says he saw it about 10 minutes before the collision. McSherry says it had been burning brightly since 6 o'clock, (see 15—18 Int'ys., Record, page 36,) and Walter Ellis, the man who was at the wheel of the Caledonia, but who testifies in behalf of the Appellant, says, in answer to x-Int. 4th, page 149, "that he could see the reflection from the schooner's light, up to the moment of the collision." That the light was a good one, is evident from the fact, that 10 minutes before the collision it was visible to those on the propeller. There can be no question that the schooner had fully complied with this provision of the law.

The proper and required signal lights on steamers are, a "bright" light forward, a red light on the larboard side, and a green light on the starboard side.

Capt. Warren and Brosaw, the wheelsman of the propeller, (who, by *their own* evidence, were the only ones on the deck of the propeller,) swear that the three lights were all burning before and at the time of the collision. But McSherry, the look-out on board of the schooner, says, to 8th Int., Record, page 35, that just as the propeller was upon them he saw a red light; he also says, in answer to 34th direct Int., page 39, that "it was a dim red light."

Captain Bangs says, in answer to Int'ys. 23—28, page 20, and 36—39, page 21, that the look-out called, "light ahead;" he ran forward, saw the red light, (which was the only one that he saw,) and in a few seconds the collision took place.

Williams, who, by the evidence, it is shown was at the wheel of the propeller, assisting Brosaw to steer, swears, positively, that not one of the three signal lights on the propeller were burning just before and at the time of the collision, (see Int'ys. 11—16, Record, page 83;) he states that when he was called to assist Brosaw at the wheel, he was sitting in his room, which was on the larboard side of the propeller, just aft of the red light, that the steps leading into the pilot-house were on the starboard side, that as he left his room, to go to assist Brosaw, he looked at the red light and it was out, that in going round in front of the pilot-house he looked up, and the "bright light" was not in its place on top of the pilot-house; that in passing up the steps of the pilot-house, he saw that the green light was out also; and as he entered the pilot-house, he saw the "bright light" setting on the floor, and the wind, as he opened the door, blew it out. 7th Int., Record, page 82.

It appears, at first, rather an extraordinary circumstance, that at the moment of this collision all of these lights should have been extinguished, but the evidence of other witnesses shows that *after* the collision the lights would not burn, and that the propeller was at times in total darkness; and although the witnesses for the Appellant endeavor in every way to conceal the fact, the evidence is overwhelming, that on the evening in question the signal lights would not burn. We account for this, in the fact that they used kerosene oil, (see Int. 3d, page 54,) which, in rough, boisterous, and windy weather, we can readily imagine would be perfectly useless. That this is the solution, and that the captain and owners of the propeller were convinced of the inefficiency of kerosene oil, is evidenced from the fact, that shortly after this collision they got new signal lights, and then burned "signal oil." Parsons' Testimony, Int'ys 13 & 14, Record, page 130.

Williams further testifies, that after the collision, (between 8 and 12 o'clock,) he saw the men trying to light the lamps (see x-Ints. 84—105, page 95;) also, that about half an hour after the collision, and after they had got the propeller again in motion, they came near colliding with a barque, and as they passed, some one on board of the barque called out to them to know what they were sailing without lights for. 7th Int., page 82.

This is corroborated by Peter Mowatt, mate of the barque Arabia, who testifies, (see 3—17 Int'ys., page 125,) that on the evening of this collision, about 8 o'clock, he was sailing on Lake Huron, in the neighborhood of where this collision took place, and that he came near colliding with a propeller under headway (see x-Int. 14th, page

129,) *that had no lights burning:* that he jumped on the windlass of the barque, swung his light, and called him "a green son of a bitch," and asked him where he was going. Record, page 126, Int. 17.

Parsons, the engineer of the Ottawa, testifies that the light was out when he went on deck, two hours after the collision. Int. 15, Record, page 130.

The Appellants bring all their power to bear against the testimony of Williams, and introduce Baldwin, the mate, Morrisette, a deck hand, and, for the third time, Captain Warren is put on the stand. Morrisette, on being questioned as to the lights, (see x-Ints. 98—105, page 161,) knows, or pretends to know, very little, he does not even remember whether the lights went out on that evening, and if they did, whether he helped to trim them.

Baldwin acknowledges that at the time the barque passed, the head (bright) light was out, and that he put a globe lamp in its place. Int'ys. 35—45, page 165.

Mowatt, the mate of the barque, says that they were all out when he passed.

The testimony of Williams is fully sustained by Mowatt, of the barque Arabia, by Parsons, the engineer of the propeller Ottawa, and by McSherry and Bangs, of the schooner Caledonia, who testify that the only light that they saw was "a dim red light," just a second before the collision. The question arises, what light was this? If it had been the larboard signal light, it would have shown out *forwards* and *sideways*, but it was not seen by those on board of the schooner until the propeller was crossing the schooner's bow. The explanation is found in the testimony of Williams. He says, that when he went up to assist Brosaw, he left a light burning in his room, (which was on the larboard side of the propeller, about 25 feet from the stem, and about 3 feet forward of the red signal light,) (see x-Int'ys. 7, page 82, 194—203, page 104, and 227, page 106,) that the door to his room was half glass, over which was drawn a red curtain, and that he closed his door when he went out. 20, 21 Int'ys., Record, page 124.

There can be no question, whatever, that the "dim red light" seen by McSherry and Bangs, just a second before the collision, and when the propeller was crossing the schooners bows, at a distance of not over 20 feet, was the light left by Williams in his room, shining

through the red curtain drawn across the glass door; its position on the steamer was about where the red signal light should have been. If it had been the signal light, it must (as we remarked before) have shown "forward" as well as sideways.

To impeach Williams, has been the main object of the Appellants, but an examination of his testimony on this point, taken in connexion with that of the witnesses Parsons, Mowatt, McSherry, and Bangs, must convince every one of its truth; that the lights of the propeller were out after the collision, there can be no question, and the presumption is strong that, if after such an accident, and after such a warning, they were recklessly running the steamer without lights, they had been at least equally reckless before the collision occurred.

It is a notorious fact, and it has been so remarked in the various decisions of this Court, that a large amount of prevarication, not to say wilful falsehood, is indulged in by the witnesses in this class of cases; and, as on the subject of these lights, it is reduced to a question of veracity, the captain and one of the wheelsmen of the propeller, swearing positively that the lights were burning, while the other wheelsman, and all those on the deck of the schooner, swear equally positively that they were not burning, we must examine closely the testimony of the witnesses, and after showing the variances in their respective statements, (variances which could not possibly have occurred, if the truth had been adhered to,) we shall be better able to judge of the truth or falsity of the various depositions.

Captain Warren, in regard to his serving in the capacity of look-out, swears (see Record, page 181, Int'ys. 12—17,) that he had nothing to do at such times but to keep a look-out, and that he never left his post, under any circumstances, without leaving a man in his place; but later in his testimony, he admits that he also attended to the courses of the vessel, rang the bells, blew the whistle, &c., (see x-Int'ys. 2—5, Record, page 183;) and it appears that shortly after this collision occurred, Baldwin, the mate, went to the pilot-house, and there was no one in or about the pilot-house but Williams the wheelsman, (see x-Int. 88, page 171.) Morrisette pretends that he, during the time the propeller was lying disabled, had charge of the wheel, acted as look-out, &c., &c. x-Int. 28, page 156.

Here is an instance of criminal carelessness and recklessness; a disabled vessel drifting around in a frequented track, with no special look-out, and a common deck hand in charge of the wheel. I would

submit that if ever a vigilant look-out should have been kept, it was under such circumstances.

Parsons, the engineer, says, that Captain Warren on several occasions, during the time when he should have been on watch, *came to the engine-room and went to sleep*, (see Int'ys. 36, 37, and 38, page 132,) and that on several occasions, he has seen *no one forward*, but the wheelsman; he mentions on one occasion, about 10 oclock at night, the mate was in bed, and the captain was in the cabin, playing euchre with Mr. Morris, one of the owners of the Ottawa; the wheelsman was the only man forward, and *he* could not see forward, on account of the jib; a vessel came near running into them, (see Int'ys 38—42, Record, page 132;) he further states, that Baldwin, the mate, told him that on a good many occasions he had waited to be relieved of his watch by the captain, but the captain not coming, he, the mate, had gone to bed, leaving no one on deck, (see Int. 43, page 132.) Captain Warren says, that at the time of the collision, and for ten minutes before, he was on the deck forward of the pilot-house, (see Int'ys. 25—33, page 182,) and he has introduced, in evidence, a photograph of the propeller, showing exactly where he stood. But what says Brosaw, his wheelsman? "In the fore part of my watch, the captain was forward on the forcastle deck; *he latter part, he was in the pilot-house; he stood right by me*," (see nt. 9, page 57). It was about the close of the watch when the collsion occurred, (see Int. 6, page 56). Brosaw also says, in answer to 2d Int., page 56:—"The Captain, standing in the wheel-house right with me, blowed the whistle, I should think, four or five minutes before the vessel struck us." These, certainly, are serious discrepancies between the captain's statements, and those of his own men.

Baldwin, the mate, says he was below before, and at the time of the collision, and knows nothing about the lights up to that time, but his statements, in regard to other facts, are shown to be entirely devoid of truth; he says that when he or the captain was on watch, they had nothing else to do but to look out, and that he had never known the captain, during such service, to be away from his post, (see Int'ys. 68—72, page 166.) How does this agree with what he told Parsons, (see Int. 43, page 132.) At the same time that he says that the captain of the watch had nothing else to do but to look out, he testifies that it was the duty of the captain of the watch to ring the bells, direct the wheelsman, attend to the courses, &c.; and that *he*, (Baldwin,) when on watch, frequently left his post to attend to other

matters about the vessel, (see Int'ys. 124—130, page 173). In answer to the 55th Int., page 165, he says he did not, either before or after the collision, trim or light any of the lamps. Parsons, the engineer, says he saw him doing so in the pilot-house; that they had the big light there, trying to light it, and they had a small light outside, setting on the companion way at the time: this was two hours after the collision, (see Int'ys. 15, 16, page 130). A great deal of testimony has been taken, to endeavor to impeach Williams, in regard to the bright light being in the pilot-house when he went on deck. It was there two hours after the collision, and there can be but little doubt that Williams' statement is correct, that it was there when the collision occurred. Baldwin says that the bright light was out only once during the evening, and that was when the barque passed; (the evidence all shows that the barque passed about half an hour after the collision); and Parsons swears positively, that two hours after the collision the lights were out. Baldwin further says, that while the head light was out, he hung a globe lamp on the forward part of the pilot-house, and that it remained burning; (see Int'ys. 35—44, page 164); but Mowatt, the mate of the barque, says, the propeller was in total darkness, (see Int'ys. 9—15, page 126).

Morrisette appears to have been called to testify solely to the facts that he did not call Williams to go to Brosaw's assistance at the wheel, and that he had not helped to trim lamps on that evening; but when questioned closely, he is in great doubt in regard to both these facts; he remembers nothing, and cannot say whether he helped to trim the lamps or not. When asked, in Int. 15, page 153, if he did not help trim the red or green lights on that evening, he answers:—"If I did, I don't recollect it;" and he gives much the same answer to the 19th Int.; his answers are equally confused to x-Int'ys. 94—105, page 161.

How can it be possible that memory, on so important a point, can be so fickle? The presumption, under these answers, is, that he had so often performed that duty, that on this particular evening he cannot remember whether he did so or not, otherwise the act would have been impressed upon his mind. A significant fact, going to show the usual condition of the lights! None of the witnesses for the Appellants will allow that the lights, with the exception of the head light, were out on that evening, or that they ever went out before: yet Parsons testifies that he has often heard the porter growling because he had to get up so often to trim them, (see Int'ys. 11, 12, page 130). Kerosene oil is the solution.

Third.

Was the schooner, at the time of the collision, sailing on her proper course?

That the proper course of the schooner, in the locality where the collision occurred, was S.E. by S. ½ S., is not denied, and McSherry and Bangs both testify that she was sailing on that course, and heading for Thunder Bay Island Light, (see Bangs' Testimony, Int. 8, page 19). The Appellants, to refute this statement, present the testimony of Walter Ellis, who was at the helm of the schooner on the night of the collision, and they endeavor to prove by him that the schooner was heading east at the time of the collision, and steering for the propeller's light, which he (Ellis) had been running after for nearly an hour, by order of Captain Bangs. His statements are simply preposterous.

Ellis says, (see Int'ys. 5—11, page 147,) "I steered from 6 o'clock till about 7¼ o'clock on a course S.E. by S. ½ S. Captain Bangs then asked me if I did not see a light; I told him, at first, that I did not; I then stood on my toes and I saw a little glimmer of light, and I told him; he told me to steer for that light; the light I steered for was on the boat I struck; I don't know what course I steered." He further states in his cross-examination, (see x-Int'ys. 1, 2, page 138,) that the light he steered for was right ahead, and that he saw it half an hour before the collision.

According to this statement, it was a most extraordinary light for a steamer to carry; the vessels were both going at the rate of 6 or 7 miles an hour, consequently this steamer's light was seen by the witness 12 or 14 miles off; he cannot remember what color the light was that he steered for, though he steered for it for half an hour, (see x-Int. 12, page 149). He further testifies that the course of the schooner was not changed to his knowledge, he did not look at the compass; he steered for the light. x-Int. 10, page 140.

Falsehood is on the face of this statement. It is shown that this man lost his clothes by reason of this collision, Captain Bangs refusing to allow the seamen to take their clothes in the boat in which they escaped from the wreck, for fear of swamping her, (see Ellis' 13th x-Int., page 149). It is further shown, that he threatened revenge because Mr. Stewart, the Appellee, would not pay him for his clothes, (see Chas. A. Stewart's Testimony, Int'ys. 4—7, page 80). He cannot tell what color the light was that he steered for! Can this be possible? But admitting that it was the head or bright

light of the steamer; if the steamer were coming directly towards him, and was properly lighted, he must have seen at the same time, all three lights, the green, white, and red. In going to the larboard of the schooner, she would have shown the white and red, and as she advanced, the white light would have become obscured, and nothing but the red light would then have been visible. Could these changes have escaped his recollection? And if the light he steered for was a signal light on board the steamer, and she was properly lighted, these changes *must* all have occurred. Taking his statement, then, to be true, the light he steered for was the *bright* light of the steamer, (for what madness would have impelled him to rush headlong on to the danger hidden behind a red or green light?) Consequently, none of the changes of lights before mentioned having occurred, the steamer had only her bright light burning, and therefore not being properly lighted, she was clearly in fault, and liable for the collision. 5th Howard, page 465.

The impossibility of any change in the schooner's course, is shown in the fact that the wind was from the west north-west, (see Warren's Testimony, Int. 3, page 59). Ellis says that at the time he took the wheel, the vessel was heading S.E. by S. ½ S.; that the boom was on the larboard quarter, and that its position had not been changed after he took the wheel. I would submit, that with the mainsail in that position, and with the wind north of west, had the course of the schooner varied much towards the east, the mainsail must necessarily have jibed. This would have been a natural effect of even a slight variation from her course.

It is shown in the evidence that Captain Bangs was on watch; that Thunder Bay Head Light was in full view, and had been so for some two hours; that the proper course was to steer for said light. Can it be possible that the course of the schooner could be so changed that she should be headed for the Canada shore, leaving Thunder Bay Island Light behind, and he (Captain Bangs) know nothing about it? The idea is too preposterous to be entertained for one moment.

This statement of Ellis is false, and he knows it. The light for which he steered, and which he saw at a distance of 12 or 14 miles, was the Thunder Bay Island Light, *and so he stated in his conversation with Peter Flood, a witness for the Appellant in this case*, (see 6th Int., page 186). I would also call the attention of the Court to the fact that Ellis signed the marine protest, entered immediately after the collision, in which he swore that the facts in relation to the

case, were as have been testified to by Bangs and McSherry, (see page 144). He now comes, nearly two years after, and, under oath, makes a statement entirely at variance with the statement in the protest. I would submit that no reliance can be placed on his testimony.

Fourth.

Was everything done at the time of, and just before the collision, by both vessels, that could have been done, and that the law requires should be done, to prevent collisions?

It is fully shown by the testimony of all on board of the schooner, that the required number of men were on deck, and properly stationed. The Appellant will doubtless contend that the order, which Ellis says Captain Bangs gave him at the moment of the collision, was the cause of the same, viz., "to put his wheel up," when the proper order was to put it down. In answer to this, we quote the language of this Honorable Court, in the case of the *Genesee Chief*, 12th Howard, 461:—"An order given in a moment of peril by the officer, although it may be erroneous, cannot be regarded as a fault on the part of him committing the error." But we doubt the truth of the statement of Ellis in this regard, for Anderson, the mate, says, "that he ran up stairs when he heard the steamer's whistle, saw her bow crossing the schooner's bow, looked to the helm of the schooner, and the man at the wheel was putting it hard aport." Int'ys. 15—17, page 41.

As to the schooner's light, it will, doubtless, be contended that it was a poor one. That it was seen by those on board the propeller 10 minutes before the collision, when it must have been at least 4 miles off, will effectually dispose of this argument.

Warren, in answer to 13th x-Int., page 61, says, "that when he first saw the light of the schooner, he could not tell what course the vessel was steering that carried it;" he further says, in answer to the 3d Int., page 59, that he lost sight of the light, &c.

What does the law say is the duty of a captain under these circumstances? "If any doubt existed as to the course or position of the vessel, the propeller should have slackened her speed, and when the danger became imminent, her engines should have been reversed or stopped;" "he should proceed cautiously, blow the whistle, &c., knowing that a vessel was somewhere in his path."

Genesee Chief, 12 Howard, 463.

Chamberlain, et al., 21 Howard, 570.
Nelson et al. vs. Leland et al. 22 Howard, 55.

Did Captain Warren slow, reverse, or stop the engines? No.

Did he, when he lost sight of the light, proceed cautiously, knowing that there was a vessel somewhere in his path? No.

Did he give any notice of his approach, by blowing a whistle, or otherwise, until the moment of collision? No.

Warren, 4th x-Int., page 60.
" 36th direct Int., page 182.

These facts are shown by the Appellants' own witnesses, and on these points, ignoring any others that we may have advanced, we are entitled to a decree.

The counsel for the Appellant will doubtless (as he did in the Courts below) indulge in a lengthy argument, supported by diagrams of positions, &c., to show that according to the relative positions of the vessels just before the collision, as testified to, the collision could not have occurred; he refers to the testimony of Warren, relating to the changes of course of the propeller after they first saw the light of the schooner, and claims that a wide gap was necessarily produced between the relative courses of the two vessels by such changes of course, and assumes that, therefore, a collision was impossible. In answer to such argument, it is sufficient to say that the collision *did* occur; that we are now dealing with facts, not with assumptions; that there was negligence somewhere, which was the immediate cause of the collision, and we can only decide as to which was the negligent party, by a careful examination of the evidence.

In reviewing the testimony in this case, we find, by their own showing, that all the requirements of the law relative to look-outs and their position, and to the duty of steamers, in order to avoid collisions, were entirely disregarded by the Appellants. On these two points, setting aside all other points in the case, we are entitled to a decree.

As to the fact that, before and at the time of the collision, the signal lights of the propeller were all out, we think there can be little doubt. Bangs and McSherry, of the Caledonia, and Williams, the wheelsman of the Ottawa, all swear to that fact. Mowatt, of the barque Arabia, swears that half an hour after the collision, he came near colliding with a propeller that was in total darkness; that it

was the propeller Ottawa, there can be no question. Mowatt states that he met the steamer about midway between Middle Island and Thunder Bay Island, on Sunday evening, the 16th September, about 8 o,clock; that as he passed the steamer, he jumped on the windlass and called out to them to know what they were sailing without lights for. Williams testifies that he heard him call out as the barque passed the steamer. It is also shown in the evidence, (see Stipulations, page 147,) that taking the time of the departure of the barque from Chicago, say Friday morning, Sept. 14th, in connexion with the movements of the schooner, (which left Chicago the afternoon before, at 4 o'clock, but stopped some 24 hours at Mackinaw,) the barque must have followed close on to the heels of the schooner on the evening of the collision.

Parsons, the engineer of the Ottawa, testifies that the lights were out several times on that evening, and, further, that it was not an unusual thing for them to go out.

The only witnesses for the Appellants, on the subject of lights, are Brosaw, the wheelsman, and Captain Warren; all the rest of the crew were below, before, and at the time of, the collision. In regard to Brosaw, his testimony was taken early in the case, and it is a significant fact, that he was not put upon the stand after the testimony of Williams was taken, to refute his (Williams') statements. As for Captain Warren, (if he was on deck at all at the time, of which there is great room for doubt,) his testimony varies so materially on the three occasions on which he was put upon the stand, and by the evidence, his character for veracity is shown to be so bad, that his testimony should be received with caution; and here we would refer to his testimony, relative to the light on the schooner, in connexion with the fact that *two amended answers* were filed in this case. The first answer admitted that just a second before the collision they saw the *light of the schooner* coming down upon them. It was afterwards intended, on the part of the witness, to deny that the schooner had any light burning at the time of the collision, and therefore the amended answer, denying that she had a light, was filed. Page 61, Int. 14. Afterwards, their witness Ellis, the wheelsman of the schooner, having testified that the light of the schooner was burning up to the moment of the collision, this point was abandoned, and it became necessary to explain the reason why he (Warren) did not see it, which he does in answer to Int. 39, page 182, as follows: "The vessel was heading right for the propeller, and had the wind free, her head sails were becalmed, and the head of the bowsprit was right in the line with the light, was the reason why I thought I could not

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see her light, if she had any; it is impossible to see a light in that position." When asked, in x-Int'ys. 20—22, Record, page 184, how he knows these facts, he replies:—"Because I have often met vessels whose light I would lose in the same position."

I would submit, that "out of his own mouth is he condemned." *Here* is a confession of criminal negligence and recklessness; he knew that a light could be lost sight of under such circumstances, yet he took none of the precautions required by law, or by common sense, to notify the approaching vessel of his proximity, neither did he slow, reverse, or back his engines.

That habitual negligence characterized the management of the propeller, is evident. Parsons, the engineer, testifies to the fact, that on several occasions, to his knowledge, there was no look-out at all on deck, and he states that on one occasion, when it was Warren's watch, he (Warren) was in the cabin, playing euchre with one of the owners; at other times, when he should have been on watch, he was asleep in the engine-room, &c. We would call attention to rather a significant fact, in regard to this witness, Parsons, the engineer of the propeller; he is about the only man on board of the propeller who was not produced as a witness for the Appellant, and they not having put him on the stand, he was called by the Appellee. In his answer to the 8th Int., page 137, will be found the reason why the Appellants did not produce him: *He told them that if he was put on the stand, he would tell the truth.*

Another evidence of negligence and recklessness, is found in the fact that at the time of the collision, and for a long time before, the propeller was rigged with an iron rudder, with which it was almost impossible to control her when she was "in ballast." Williams says, in answer to x-Int'ys. 284—286, page 109, that on the night of the collision she kept "running around," "that she would sheer off one way, and then another." Parsons says, in answer to Int'ys. 4—6, page 137, that at times, when light, the propeller was perfectly unmanageable, and she would turn round and round two or three times. This will account for the fact, that when the barque Arabia passed them they came in such close proximity; although they had seen the barque some time before, long enough to have got out of her way yet they came near colliding with her; the reason was, the steamer would not answer her iron rudder. They certainly were aware of this fact, yet they continued to run her in that condition. The recklessness and desperate character of Captain Warren is further shown in the fact, that for a long time he was running the Ottawa without

a license, (see Parsons' Testimony, Int'ys. 45—47, page 132.) It is also in evidence, that a woman of loose character was on board of the Ottawa at the time of this collision, (see Parsons' Int'ys. 48—54, page 133.) Williams testifies to the same fact, and says that he thinks her presence on board, was the cause of the collision, (see x-Int'ys. 414, 415, page 120.) But if any doubts can arise as to the desperate and brutal character of this man Warren, they will be entirely dispelled in the fact, that after the engine of the Ottawa had been repaired on the night of the collision, he (Warren) ordered Parsons, the engineer, to put on steam; the Caledonia lay in sight, her sails flapping in the wind; Parsons called Warren's attention to the fact, and asked him if he should not go to her and render her assistance. "*Let them go to Hell, and we will take care of ourselves,*" was the reply, and he steamed off, leaving the wretched crew of the schooner, ten miles from shore, on this stormy night, with their vessel sinking beneath them, to save themselves as best they could, or go to the bottom with her, (see Parsons, Int. 55, page 133.)

Warren has introduced, as evidence in this case, a photograph of the Ottawa, showing where he stood as look-out, intending to convey the idea that he always occupied that position during his watches. *Brosaw says that he stood by him in the pilot-house*, and on other occasions, "in our mind's eye," we see him asleep in the engine-room, or playing euchre in the cabin.

The question of lights has been made the great point in this case; if the testimony of Williams is true, there is no room for any argument in the case. It must be borne in mind that the three principal witnesses for the Appellants had been in the employ of the propeller from the time of the collision; that Warren was liable over to the owners of the propeller, that Baldwin was mate, and Morrisette, it is shown by the evidence, (see Record, page 155, x-Int'ys. 12, 13,) had left the service of the propeller, but had been reëmployed by Captain Warren, only a few days before his examination, and that Warren conversed with him in relation to the collision, the day after such reëmployment, (see Record, page 155, x-Int'ys. 20—27.) I would submit that in judging of the credibility of the witnesses, these several relations and interests should not be lost sight of.

But admitting that the steamer's lights were all properly burning, what is then the position of the propeller? They had no look-out, as required by law; but admitting that they had a look-out, he was not properly stationed; the testimony also shows that there was the greatest possible negligence, after the schooner's light was seen,

by the propeller, and that no precautions whatever were taken by the propeller to avoid a collision, or to give notice of her approach.

The principal witness for the Appellants is Captain Warren, and we would ask whether the testimony of this man shall have any weight in this case; this *would-be* murderer, surely would not hesitate at perjury; he has endeavored to swear this case through against the overwhelming testimony that has been brought against him, he knows that he is guilty, he knew it on the night of the collision; he knew his liability; he knew that his negligence had caused the collision. "Let them go to Hell!" was his earnest prayer, and he hoped to crawl away in the darkness, and that all living evidence against him would be buried deep beneath the waters of Lake Huron.

All of which is respectfully submitted:

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